United Nations E/C.19/2010/12/Add.5

Economic and Social Council

Distr.: General
16 February 2010

Original: English

Permanent Forum on Indigenous Issues
Ninth session
New York, 19-30 April 2010
Items 3 and 4 (a) of the provisional agenda*

Discussion on the special theme for the year: "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples"

Human rights: implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Information received from Governments

Cambodia

Summary

The present document provides information on the progress of registration of land of the indigenous community as collective ownership in Cambodia, as well as responses to a questionnaire from the Secretariat regarding the implementation of recommendations of the Permanent Forum on Indigenous Issues and other relevant information. In addition, the Government of Cambodia submitted the text of the national policy on the development of indigenous communities, approved by the Council of Ministers on 24 April 2009.

* E/C.19/2010/1.

10-24262 (E) 080310

Please recycle

I. Progress of registration of land of the indigenous community as collective ownership in Cambodia

1. The Government of Cambodia is working on poverty alleviation as its main priority through: (a) ensuring highly sustainable economic growth in the long term; (b) a more equitable distribution of economic growth; and (c) the sustainable use and management of natural resources. The indigenous peoples who live in Cambodia are considered to be Cambodian nationals since they are "children of the same womb", regardless of different cultures and traditions. Moreover, during the genocidal regime of Pol Pot from 1975 to 1979, all indigenous peoples suffered through this tragedy. During this period, the private ownership regime, beliefs, customs and immovable properties inherited from their ancestors were also destroyed.

2. The main livelihood of the indigenous peoples comes from the traditional practice of shifting cultivation, moving from one site to another and clearing the land for farming. They are also heavily dependent on forestry sub-products, hunting and natural resources. As a result, their living conditions are of a low standard, both in terms of materials and knowledge, compared with the Khmer peoples — core nationals. For this reason, the Government of Cambodia has enacted two policies for the development of the areas inhabited by indigenous peoples, and for their rights and the protection of their identity, by preserving their beliefs and traditional values of living and promoting their enjoyment of the benefits based on national law, international covenants or treaties related to human rights and the rights of indigenous peoples. The two policies are: the policy on the development of indigenous communities and the policy on the registration and right to use of land of indigenous communities.

3. The achievements from 2002 to the date of the present report are set out below.

4. The following policies and legal framework have been in place since 24 April 2009:

(a) Policy on the development of indigenous communities;

(b) Policy on the registration and right to use of land of indigenous communities;

(c) Sub-decree on procedures for registration of land of indigenous communities;

(d) Sub-decree on the procedure for commune land use planning.

5. In addition to these, the following policies, sub-decrees and circulars support the operational work:

(a) Sub-decree on State land management;

(b) Sub-decree on economic land concessions;

(c) Circular on illegal occupation of State land;

(d) Circular from the Ministry of Rural Development on the procedure and principles of implementation of the policy on establishment of indigenous peoples' identity.

6. The above-mentioned policies and legal framework were prepared with wide participation and the input of relevant stakeholders and representatives of indigenous peoples, including representatives of indigenous peoples with high-ranking positions in Government and indigenous members of local communities.

7. The dissemination of the above-mentioned policies and sub-policies was aimed at the following groups:

(a) Legislative institutions (the nine commissions of the National Assembly, the Senate and representatives of the Constitutional Council, non-governmental organizations and international organizations located in Phnom Penh) with a total number of 68 participants;

(b) Executive institutions, including bodies concerned at the national level, capital and provincial governors, the municipal council, the Khan council, commune chiefs and representatives of indigenous peoples from areas with high concentrations of indigenous peoples, with a total number of 150 participants;

(c) Commune council members and representatives of indigenous peoples from provinces with a majority indigenous population. This training was organized by the Community Legal Education Centre (CLEC) in the province of Ratanakiri;

(d) Information was disseminated through the website of the Ministry of Land Management, Urban Planning and Construction to inform the public;

(e) Members of provincial councils and boards of governors, commune councils, relevant provincial technical departments and representatives of indigenous peoples from provinces holding meetings of indigenous peoples and where widespread information campaigns have been undertaken since the time of the Water Festival (in November 2009).

8. Technical aspects are described below.

Forming as an officially registered community in order to register (their) land collectively

9. According to the Land Law 2001, there are two types of collective ownership of land: collective ownership of the immovable property of monasteries and collective ownership by indigenous communities. Thus, in order to be able to register collective ownership, a community needs to be formed as a community or association that is recognized by the local authorities. For the time being, in the absence of legislation on the establishment of an association or a non-governmental organization, or related to the requirements of indigenous peoples, the Government temporarily requires the registration of such organizations, including the communities of indigenous peoples, at the Ministry of Interior. The community or association must be organized with respect for the rights to decision-making of the indigenous peoples, excluding any coercion that would force them to join a community without their informed consent. In the spirit of helping the indigenous peoples to form recognized indigenous communities over time, a project for the registration of indigenous communities as legal entities financed by the Danish Agency for International Development (DANIDA) and the International Labour Organization (ILO) and implemented by the Ministry of Interior is now in progress. In order to promote the implementation of this project, the National Committee for Sub-national Democratic Development issued a decision on 3 March 2009 on the

listing of environmentally vulnerable areas and areas of indigenous peoples as a basis for the implementation of the "Commune/Sangkat" budget plan. Drawing from this project, the Ministry of Interior, in a letter dated 6 April 2009 from the Ministry of Interior to the Ministry of Economy and Finance, has issued preliminary information related to the establishment of indigenous communities, with the following outcomes:

(a) Some 139 communities in the target villages declared by commune councils in Mondulkiri province;

(b) Some 50 communities in the target villages supported by non-governmental organizations;

(c) Information about provinces where above 60 per cent of the population is made up of indigenous peoples, and information about environmentally vulnerable areas where indigenous peoples live;

(d) Information about areas where from 31 to 63 per cent of the population consists of indigenous peoples.

10. Based on the above principles, in 2009, six more communities were finalizing the process of adopting their community statutes and electing their community committees, known as the "Traditional Authority". Six new communities are now working to submit their registrations to the Ministry of Interior, and subsequently to register for collective land title as communities to the provincial State land management committee.

The collective land title in three pilot communities

11. The pilot project, with financial support from the German society for technical cooperation (GTZ), is progressing towards the finalization of the plan, expected in early 2010. The working group in charge of the pilot project has reached the phase of land identification and boundary demarcation of land belonging to indigenous communities and land under the authority of the State that is ready for community land use planning. This process is carried out in accordance with the sub-decree on State land management and includes the participation of all the members of the indigenous communities, neighbouring communities and individuals and local authorities. During the rainy season, the project was delayed in the phase of placing boundary marks on the actual site in order to be ready for the official registration of the land.

Provisional protection for the indigenous peoples' areas where the land is not yet registered

12. Provisional protection is undertaken through the adoption of orders forbidding any sale, purchase, investment or clearing of land in the areas of the indigenous community. Until now, there has been no clear basic criteria to provide official confirmations of the establishment of indigenous communities.

13. Some non-governmental organizations are concerned that indigenous communities could lose their land and their sources of income, however they have not considered (a) the human rights of the members of the indigenous communities, who are also Cambodian citizens, to choose whether they want to live within the community or to live individually in relation to the management and use of the land;

and (b) the opportunists who can take advantage of their status of indigenous minority members in order to obtain control of land for commercial or political objectives in order to slow down the Government development's process, which is very easy to do since these categories of people, after the fall of Pol Pot and his genocidal regime, were all displaced and encouraged to take land, according to their needs, in order to support themselves according to their culture, beliefs, traditions and way of living. For this reason there are a lot of difficulties in clearly determining their areas and identity. Determination of the land they claim requires careful study.

14. For these reasons, the National Committee for Sub-national Democratic Development and the Ministry of Rural Development have issued the circular and decisions mentioned above. However, along with such measures, the two provinces with a majority indigenous population — Ratanakiri and Mondulkiri — have issued *deika* (instructions) curbing the authorities from certifying any paperwork related to the sale, exchange, transfer, lease, or mortgage of land within the respective province, except if there is an agreement with the Government or Provincial Authority in advance.

15. In relation to the land granted under the Economic Land Concession programme, the Government has pushed to re-evaluate concessions that fail to undertake social and environmental impact assessments, especially those that may have a negative impact on the indigenous peoples or fail to have an appropriate land use plan. As of 2007, there were seven concession contracts that had been cancelled.

16. With regard to the information associated with the forced eviction of indigenous peoples from land without compensation, this criticism has no grounds or justification. For any project involving the right to legal possession of land by indigenous peoples, either collectively or individually, which is publicly known and recognized by local authorities, especially by the commune council, there has always been free negotiation and agreement by the community in advance. Most problems involve opportunists using indigenous communities as a tool to claim land. Such claims also cover the ancestral land of indigenous peoples, which have already been denied recognition under the Land Law on all land occupied before 1979, unless indigenous peoples had continued to occupy it since that time. This is because most of the land traditionally used and occupied by indigenous peoples, particularly Chamkar and shifting cultivation areas, is State property. According to the sub-decree on procedures for registration of land of indigenous communities, if a community is officially formed, land could be provided to be registered under a collective title.

17. In conclusion, the Government has invested all its efforts to guarantee the rights of indigenous peoples, especially their right to land, by issuing a number of policies and legal frameworks as well as providing technical support to raise the dignity of peoples of all races and to promote development. This allows them to enjoy a better livelihood, to escape poverty, to have greater social protection from exploitation by opportunists, and to have peace, safety, solidarity and morality in the society as a whole. Despite such efforts, there are inevitable impacts and some encroachments resulting from weakness within the authorities at different levels, including misleading concepts of preserving, either for the purpose of researching or for the purpose of developing, the indigenous community. For the reasons set out above, the Government still needs the cooperation and involvement of those

non-governmental and civil society organizations that, in good faith, reflect on the weak points and ensure that appropriate measures are taken.

II. Answers to the questionnaire of the Secretariat

Question 1: Response to recommendations addressed to Governments under one or more items under the mandate/agenda of the Permanent Forum and the eighth session and to recommendations of previous sessions (if they have not been addressed in previous reports)

18. Cambodia recognizes human rights as stipulated in the Universal Declaration of Human Rights and the United Nations Declaration on the Rights of Indigenous Peoples, which was adopted by the General Assembly in September 2007. In 2009 Cambodia adopted:

(a) National policy on the development of indigenous communities;

(b) National policy on the registration and right to use of land of indigenous communities;

(c) Sub-decree on procedures for registration of land of indigenous communities.

These policies have been established to meet the United Nations Millennium Development Goals and Cambodia's Millennium Development Goals, in particular the first prioritized goal of reducing poverty and famine. Concrete actions are being taken in line with the possibilities, competence and context of Cambodia, including: conducting the identification assessment of indigenous peoples; the land registration of indigenous communities; and the preparation of land registration for indigenous communities which were prepared by the Ministry of Rural Development, the Ministry of Interior and the Ministry of Land Management, Urban Planning and Construction.

Question 2: Given that the special theme of the ninth session of the Permanent Forum is "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples", please include information on how your Government is dealing with this important issue.

19. The Government has a national policy on the development of indigenous communities, which includes important information in response to articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples, as below:

(a) Environment: Development plans in zones of indigenous peoples can be carried out after the environmental and social impact assessments are completed and the information is disseminated among the relevant indigenous peoples in advance, making sure that they have the chance to participate in giving their opinions regarding their needs;

(b) Infrastructure: The study of the impact assessment on the environment, economics, social and cultural issues and natural resources must be completed before infrastructure projects begin and the results of the study must be taken into consideration and the information disseminated widely and locally by using the Khmer language and, if possible, indigenous languages;

(c) In the fields of industry, mines and energy:

(i) Sectoral development of small and medium enterprises and craftsmanship focused on processing the natural resources, agro-industry and artisanal and cultural products available within the indigenous peoples' regions;

(ii) Provide information and knowledge for the indigenous peoples about the processes of production for small and medium industries and craftsmanship;

(iii) The relevant ministries promote and encourage licensed investors in natural resources to build various infrastructure projects including schools, hospitals and vocational training centres for the mining industry, within the indigenous peoples' regions;

(iv) Provide maximum job opportunities for indigenous peoples and train inexperienced workers in mineral exploration, equipping them with appropriate competency and skills to participate in the work of licensed investors at all levels of mineral exploration and mineral exploitation;

(v) Encourage education, instruction and trainings, disseminate information about the use of all types of electricity and reduce the impact on the environment and on society in the indigenous peoples' regions in order to ensure that development is safe and sustainable;

(vi) All relevant ministries support, facilitate and encourage those who want to develop small and medium electricity schemes such as recycled electricity, including solar power, small hydroelectric projects, biodiesel, biomass and biogas;

(vii) Encourage the establishment of energy plants through a planned development process for the indigenous peoples' regions;

(viii) Encourage fairness in the distribution of electricity and make efforts to keep the prices of electricity from the small and private electricity providers reasonable for regular domestic use for the indigenous peoples' regions.

Question 3: Obstacles to the implementation of the Permanent Forum's recommendations

20. Cambodia does not have serious obstacles to the implementation of these recommendations. The Ministry of Rural Development has coordinated the work for indigenous peoples since 1994.

Question 4: Facilitating factors for the implementation of the Permanent Forum's recommendations

21. The Ministry of Rural Development is the facilitator of all works related to the development of indigenous peoples in Cambodia and there are a number of non-governmental organizations, United Nations agencies and other development partners also carrying out work in this particular field.

Question 5: Does your Government have specific laws, policies or other similar tools to address indigenous peoples' issues in your country? If so, please provide details (unless covered in the responses to the above questions).

22. The Government of Cambodia has promulgated the following measures:

(a) Chapter 2 of the Land Law about the immovable properties of indigenous peoples' communities (articles 23 to 28);

(b) Chapter 9 of the Forest Law on the rights of indigenous peoples to traditional use (articles 40 to 47);

(c) Chapter 6 of the Law on Natural Protection, participation and the rights of use of local communities and indigenous peoples' communities (articles 21 to 26);

(d) Chapter 2 of the Law on Municipal/Provincial/Towns, District/Khan Administration, on the Councils, section 2, regarding roles and responsibilities and powers of the Councils;

(e) Two major policies; the policy on the development of indigenous communities and the policy on the registration and rights to use of land of indigenous communities, which were adopted on 24 April 2009 and have special characteristics for the development of indigenous peoples prescribing their protection, retaining the identity of their traditions, beliefs and customs in their everyday life and livelihood;

(f) Sub-decree on procedures for registration of land of indigenous communities;

(g) Sub-decree No. 118 dated 7 October 2005, on State land management;

(h) Sub-decree No. 72 dated 5 May 2009 on the procedure of the "Commune/Sangkat" land use plan;

(i) The circular of the Ministry of Rural Development on the procedure and the methodology on the implementation of policy for the development and identification of an indigenous community.

The policy and legal framework stated above have been jointly organized, including through comprehensive consultations with all stakeholders, indigenous peoples' representatives, ranging from top management to local people, as well as community members at the national, regional and community levels.

Question 6: Does your Government have a national institution (ministry, department, unit) as a focal point on indigenous issues? If so, please provide the name and contact information of the focal point.

23. The Ministry of Rural Development, which acts as the secretariat of the Government, consists of the Department of Indigenous Peoples Development, which has the duty to fulfil the mission in the spirit of Sub-decree No. 51 for the management and development of indigenous people under the roles and duties as stated below:

(a) Prepare a short-, medium- and long-term plan for the development of indigenous peoples;

(b) Conduct research on indigenous peoples living in mountainous, plateau and lowlands areas, identifying the customs and traditions in each community nationwide;

(c) Prepare the planning and programme implementation regarding indigenous peoples' development for those living in the mountainous, plateau, and lowland areas, based on the priorities identified;

(d) Facilitate all activities of indigenous peoples' development for the people living in such areas nationwide;

(e) Review, evaluate and report on the implementation of programme activities and project developments for indigenous peoples;

(f) Provide training to staff at all levels and organize workshops with all stakeholders implementing programmes and development projects on indigenous peoples, with the aim of involving indigenous peoples living in mountainous, plateau and lowlands areas in the development process;

(g) Establish and manage the National Centre for information on Development for Indigenous Peoples living in mountainous, plateau and lowlands areas, in cooperation with stakeholders, international organizations, non-governmental organizations and neighbouring countries where similar programmes are being implemented;

(h) Establish guidelines and criteria on the establishment of communities of indigenous peoples living in mountainous, plateau and lowlands areas.

Name and contact of focal point:

Director of the Department of Indigenous Peoples Development
Address: Street No. 196, corner Russian Boulevard
Phnom Penh
Cambodia
E-mail: chungminority@online.com.kh
Website: www.mrd.gov.kh or contact: Tel: 097 903 86 86

Question 7: Does your Government have a regular capacity-building programme on indigenous issues for national civil service staff? Alternatively, is there an ad hoc capacity-building programme or a plan for capacity-building activities in this area for relevant civil service staff?

24. Capacity-building activities have not been conducted regularly due to the limited budget available. However, there are programmes and capacity building plans for officials and indigenous peoples' communities. The Ministry of Rural Development and the Ministry of Land Management, Urban Planning and Construction have disseminated the national policy on the development of indigenous communities to the legislative bodies, including members of the Senate and members of the National Assembly, members of the Constitutional Council, local organizations and international organizations. Such activities are also conducted for the executive body, including the management from all ministries, provincial governors and chairs of provincial boards, members of provincial councils, district governors, commune/Sangkat councils, and the representatives of indigenous peoples' communities in Ratanakiri and Mondulkiri provinces.

Question 8: Please provide information regarding your Government's promotion and/or implementation of the United Nations Declaration on the Rights of Indigenous Peoples.

25. The International Day of the World's Indigenous People is celebrated annually and a plan to have the relevant policy disseminated to local co mmunities has been formulated. In addition, the Government of Cambodia has motivated indigenous peoples to play a role in important institutions such as the Senate and the National Assembly, and in management, including provincial governors and village chiefs, in the areas where they live.

United Nations E/C.19/2010/12/Add.6

Economic and Social Council

Distr.: General
19 February 2010

Original: English

Permanent Forum on Indigenous Issues
Ninth session
New York, 19-30 April 2010
Items 3 and 4 (a) of the provisional agenda*

Discussion on the special theme for the year: "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples"

Human rights: implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Information received from Governments

Norway

Summary

This document contains the response of the Government of Norway to the questionnaire sent to Member States concerning the recommendations of the eighth session of the Permanent Forum on Indigenous Issues.

* E/C.19/2010/1.

10-24618 (E) 150310

Please recycle

Contents

		Page
I.	Response to recommendations	3
II.	Information on how the Government is dealing with articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples	4
III.	Specific laws, policies and tools to address indigenous peoples	5
IV.	Name of focal point on indigenous issues	6
V.	Capacity-building programme on indigenous issues	6
Annexes		
I.	White Paper No. 28 (2007-2008) on Sami policy	7
II.	Statement in explanation of vote by the representative of Norway following the adoption in the General Assembly of the Declaration on the Rights of Indigenous Peoples, on 13 September 2007	11

I. Response to recommendations[1]

Paragraph 53: endorse and implement the United Nations Declaration on the Rights of Indigenous Peoples

1. In general, the rights laid down in the Declaration have already been implemented in Norway, for example, through the Finnmark Act and the Procedures for Consultations between the State Authorities and Sámediggi (the Sami Parliament) of 11 May 2005. Reference is made to the Explanation of the vote given by Norway at the time of the adoption of the Declaration (see annex II).

2. With reference to the rights to land in article 26 et seq, Norway considers that for States parties to International Labour Organization (ILO) Convention No. 169, concerning Indigenous and Tribal Peoples in Independent Countries, these rights must be understood to refer to the rights specified in that Convention. Norway ratified ILO Convention No. 169, in 1990. In order to meet the provisions in ILO Convention No. 169, article 13 et seq, the Finnmark Act was adopted by the Storting (the Norwegian Parliament) in 2005. The process of following up the report from the Sami Rights Committee II will establish a base for considering future legal amendments concerning Sami rights outside the county of Finnmark.

3. The recognition of the right to self-determination referred to in the Declaration requires that indigenous peoples have full and effective participation in a democratic society and in decision-making processes relevant to the indigenous peoples concerned. Several articles in the Declaration specify how the right to self-determination may be exercised. Consultations with the peoples concerned is one of the measures outlined in the Declaration. As a State party to ILO Convention No. 169, Norway has implemented the consultation requirements specified in that convention. For further details, see section II below.

Paragraph 54: recognize fishing rights

4. The Coast and Fishery Commission completed an official report on the right to salt water fisheries in February 2008 (NOU 2008: 5). In the report, the Commission argues that people living by the fjords and by the coast, have a right to fishery in the sea outside Finnmark. This is based on historical usage and international law concerning indigenous people. The public hearing of the report has ended. The proposals are currently being considered within the Norwegian Ministry of Fisheries and Coastal Affairs.

Paragraph 55: ratify the Nordic Sami Convention

5. The Government is currently working on the draft convention on Nordic Sami cooperation, in cooperation with the authorities in Finland and Sweden and the three Sami parliaments. Negotiations on the draft convention must be carried out before the Nordic States can endorse and ratify a Nordic Sami Convention. A joint proposal for how these negotiations may be carried out is now under consideration. A key question is how the Sami parliaments shall participate in negotiations. Further work on the draft convention depends on all the collaborating parties' decisions on this matter.

[1] For the text of the recommendations, see *Official Records of the Economic and Social Council, 2009, Supplement No. 43* (E/2009/43), chap. I, sect. B.

Paragraph 67: reach an agreement with the Sámi Parliament on the draft mineral act

6. There has been an ongoing process over 15 years to try to reach a new Mineral Act. Consultations concerning the Mineral Act took place in the period of 2007-2008 between the Government, Sámediggi, and the Sami Reindeer Herder's Association of Norway. Agreement was achieved on several provisions, but the consultation process was finalized without a full agreement. Sámediggi could not give its support to the proposed act, due to the fact that some provisions regarding Sami interests only apply to the county of Finnmark. The Proposition to the Storting was submitted in spring 2009. The views of the Sami parties (Sámediggi and the Sami Reindeer Herder's Association) were reflected in detail in the Proposition. The new Mining Act was adopted by the Storting in the spring of 2009, and the Act entered into force 1 January 2010.

7. Proposals for legislation concerning Sami land rights and resources outside of Finnmark County will soon be under consideration, and the Norwegian Government intends to engage in further consultations with Sámediggi regarding these issues.

Paragraphs 56, 58 and 60: recommendations to the Arctic States

8. The implementation of the Government's High North Strategy is being followed up in a number of areas. The environment, business development, infrastructure, maritime surveillance and knowledge and research are some of these areas. Knowledge is crucial for value creation, natural resource exploitation and environmental management in the High North. This includes knowledge about indigenous issues. In order to ensure the right for the Sami people to determine their economic, social and cultural development, Sámediggi and Sami representatives are involved in the implementation of the High North Strategy.

II. Information on how the Government is dealing with articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples

9. In 2008, the Government of Norway presented White Paper No. 28 (2007-2008) on Sami policy. In the White Paper, the concept of self-determination for the Sami people is discussed with reference to the United Nations Declaration on the Rights of Indigenous Peoples and the ongoing work on a Nordic Sami Convention. An unofficial translation of the relevant sections of the White Paper (section 1.3.6 and 1.3.7) is contained in annex I.

10. In practice, the right to self-determination must primarily be exercised through Sámediggi as an elected body with decision-making and consultative authority. In the Norwegian context, Sami self-determination is a question of whether our democratic system is capable of giving the Sami population an adequate degree of influence on the national political processes and decisions that concern them.

11. Some important measures have already been implemented, such as:

- The Finnmark Act
- New provisions in the Planning and Building Act concerning Sámediggi's authority to oppose in planning matters

- Procedures for consultations between state authorities and Sámediggi.

12. The Norwegian Government and Sámediggi agreed on Procedures for Consultations between the State Authorities and Sámediggi in 2005. The consultation procedures apply to the Government and its ministries, directorates and other subordinate state agencies or activities. Furthermore, they apply in matters that may affect Sami interests directly. The substantive scope of the consultations may include various types of matters, such as acts, regulations, individual decisions, guidelines, measures and decisions (e.g., in reports to the Storting). The consultations shall be undertaken in good faith, with the objective of achieving agreement to the proposed measures. The procedures have led to increased awareness of the duty to consult in Government ministries and agencies. From January 2008 through May 2009, formalized consultations have taken place in 40 different cases, resulting in an agreement in all but a few.

III. Specific laws, policies and tools to address indigenous peoples

13. The Sami Act was adopted in 1987. The Act establishes Sámediggi, and contains provisions about elections to Sámediggi. In addition, the Act affirms that Sami and Norwegian are languages of equal worth. The language provisions give citizens the right to use Sami language in their encounter with public authorities. This applies to the translation of regulations, announcements and forms into Sami, as well as the right to use Sami in contact with the legal system and health and welfare services. Some of the provisions in the Sami Act are limited to the administrative district for the Sami languages. Nine municipalities are included in the administrative district. The district has expanded through the last years, and today the district includes municipalities both in the North-, Lule- and South Sami area.

14. The Finnmark Act ("the act relating to legal relations and management of land and natural resources in the county of Finnmark") was adopted by the Storting in the spring of 2005. The Act recognizes that the Sami people and others, through long use of land and water, have acquired rights to land and natural resources in Finnmark. The Finnmark Act established the Finnmark Estate, an independent body that now owns all the land that used to lie to the State (this constituted about 95 per cent of the land in Finnmark County). The Finnmark Estate is governed by a board where half of the members have been appointed by Sámediggi and the other half by the Finnmark County. In order to investigate and map existing rights, the act established a special Finnmark Commission. If there is disagreement concerning the commission's conclusions, the parties may bring the case before the Uncultivated Land Tribunal for Finnmark. This is a special court that passes legally binding judgments.

15. Another question concerns the Sami's right to use of land and natural resources south of Finnmark. On this issue, the Sami Rights Committee delivered an official report in December 2007. The report was on a broad hearing in 2008/2009 and the proposals in the report will be considered by the Government.

IV. Name of focal point on indigenous issues

Norwegian Ministry of Government, Administration, Reform and Church Affairs
Department of Sami and Minority Affairs
Postboks 8004 Dep
NO-0030 Oslo
Norway

Tel: +47 22 24 71 75

www.regjeringen.no/en/dep/fad.html

V. Capacity-building programme on indigenous issues

16. There is no regular capacity-building programme on indigenous issues for national civil service staff. The Department of Sami and Minority Affairs organizes seminars on indigenous issues on an ad hoc basis. These seminars are offered to civil servants within the Government Ministries and agencies who work with Sami issues. The Department also has an advisory function in order to facilitate the consultation processes between Government ministries and agencies and Sámediggi.

Annex I

White Paper No. 28 (2007-2008) on Sami policy

1.3.6 The United Nations Declaration on the Rights of Indigenous Peoples

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly on 13 September 2007. The Declaration is not binding under international law, but will constitute an important framework for further efforts to establish the rights of indigenous peoples. The Declaration will have particular significance in those countries where indigenous peoples reside, but which have not ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

Work on the Declaration has continued for many years. In 1993, the Human Rights Commission's Working Group on Indigenous Populations submitted a draft declaration. The draft was then worked on by a special working group of the Commission until a final draft, after lengthy negotiations, was adopted by the Human Rights Council in 2006. The General Assembly adopted the Declaration on the Rights of Indigenous Peoples with an overwhelming majority. Four countries, Australia, Canada, New Zealand and the United States of America, voted against adoption of the Declaration.

Representatives of the indigenous peoples and United Nations Member States cooperated closely in the work on the text. The Norwegian delegation to the working group that drafted the text consisted of representatives of the Norwegian authorities and Sámediggi (the Sami Parliament in Norway). Together with Sámediggi and Sami organizations, the Norwegian authorities have played a proactive role in bringing about a declaration.

Throughout the world, indigenous peoples are among the most marginalized social groups. Recognition of the rights of indigenous peoples in a United Nations document will be an important instrument for strengthening their status. Although the Declaration is not legally binding, it contains a strong encouragement to States to recognize the rights of indigenous peoples to land and resources.

Great importance has been attached to a declaration on the rights of indigenous peoples by the Sami. Although many of the rights laid down in the Declaration have already been implemented in Norway, for example, through the Finnmark Act and the Procedures for Consultations between the State Authorities and Sámediggi of 11 May 2005, the Declaration is an important signal of the State's general position regarding the rights of indigenous peoples.

The Declaration concerns the rights of the world's indigenous peoples. The Declaration contains provisions regarding both fundamental requirements such as food, health and education, and provisions regarding use of traditional resources and land areas. The Declaration ascertains the rights of indigenous peoples to land and natural resources that they have traditionally owned, occupied or used. These rights are restricted to apply to the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use. The Declaration's provisions concerning rights to land in article 26 et seq can be interpreted in various ways. In the case of Norway, indigenous peoples' rights to land are defined by ILO Convention No. 169.

The principal debate during work on the Declaration concerned the right of indigenous peoples to self-determination. In connection with the voting in the General Assembly, Norway submitted an interpretive declaration on the right of indigenous peoples to self-determination, stating that this right shall be exercised within the framework of the State's territorial integrity, and that, in Norway, it is deemed to be safeguarded through current arrangements and rights pursuant to Norwegian law. Recognition of the right to self-determination for Sami is consistent with the position held by Norway for a number of years, inter alia, in the two previous main white papers on Sami policy (Report No. 55 (2000-2001) to the Storting and Report No. 33 (2001-2002) to the Storting). We refer also to point 5.2.1 of the Standing Committee's recommendation S. No. 110 (2002-2003) concerning the concept of self-determination.

The Declaration makes it clear that self-determination embraces the right of indigenous peoples to work freely for their own economic, social and cultural development. At the same time, the right to self-determination may not be invoked in respect of actions contrary to the United Nations Charter or United Nations human rights conventions.

When exercising their right to self-determination, indigenous peoples have a right to autonomy or self-government in matters concerning their internal and local affairs, and a right to an arrangement for financing their self-government functions, cf. article 4. Recognition of the right to self-determination as referred to in the Declaration further requires that indigenous peoples have full and effective participation in a democratic community, and in decision-making that is relevant to them.

However, the practical implications of the right of the Sami to self-determination have not been fully clarified. The Government assumes that the debate on the right to self-determination must include a debate on the interpretation of the concept, and on how a right to self-determination can be implemented in practical policy. A people's right to self-determination does not necessarily have the same implications in cases where the right can be associated with a people that resides alone within a well-defined geographical area and cases where the right is associated with a people that is dispersed in areas where other ethnic groups also reside. The development of the right of the Sami to self-determination must also be considered in relation to any international precedence effects. Further clarification of the right of the Sami to self-determination may be of interest when the right to self-determination for indigenous peoples is to be defined by other States. See also section 3.1 of the Annual Report of Sámediggi for 2007.

In the preamble to the Declaration on the Rights of Indigenous Peoples, it is established that the situation of indigenous peoples varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds should be taken into consideration. In practice, this means that the rights laid down in the Declaration must be implemented in a manner adapted to the situation of the indigenous people concerned. In the Norwegian context, Sami self-determination is a question of whether our democratic system is capable of giving the Sami population an adequate degree of influence on the national political processes and decisions that concern them.

In Norway, a number of political areas will be relevant and be of considerable importance to the Sami. As regards such matters, the right to self-determination can be viewed as a right to influence and co-determination in matters that affect the Sami as a group. When such a right to participation and influence is to be implemented, two categories of rights may be considered. Firstly, it concerns a right to make decisions alone in matters that only apply to the Sami, i.e., cultural and linguistic autonomy. Examples are measures concerning Sami language and the Sami Development Fund.[1] Secondly, it must concern a right to genuine, effective participation in the exercise of public administration affecting both the Sami and the community that it is part of, for example as regards decisions concerning land-use planning and exploitation of resources. A right to participation may, inter alia, be implemented through consultations, and an obligation to consult the indigenous people concerned is also referred to in the Declaration. In Norway, the consultation obligation is implemented through the procedures for consultations between the State authorities and Sámediggi in accordance with article 6 of ILO Convention No. 169. The right to participation in the management of natural resources can also be exercised by the appointment by Sámediggi of representatives to joint governing bodies, such as *Finnmarkseiendommen* ("the Finnmark Estate") and the regional predator management boards.

In practice, the rights referred to must primarily be exercised through Sámediggi as an elected body with decision-making and consultative authority.

Although the concept of self-determination does not have a precise meaning, the Government and Sámediggi have conducted a dialogue on practical measures to implement Sami decision-making authority and co-determination within the scope of current regulations. Certain measures have already been implemented, such as the Finnmark Act and consultation procedures. Some have been submitted to the Storting, such as new provisions in the Planning and Building Act concerning Sámediggi's authority to oppose in planning matters. Others are currently under assessment or are undergoing consultation, for example, the proposal from the Coastal Fisheries Committee for Finnmark concerning participation in the management of sea fishing in Finnmark and the proposals from Sami Rights Committee II.

There will be a need for continued efforts to establish the specific implications of the right of the Sami to self-determination. It is moreover probable that importance will be attached to the solutions arrived at in Norway in international developments associated with the right to self-determination of indigenous peoples. The Government presupposes that the development of Sami self-determination will take place within the framework of an existing independent and democratic state and within Norway's existing geographical boundaries.

1.3.7 The draft Nordic Sami Convention

A Nordic expert group submitted its recommendations with a draft Nordic Sami Convention in autumn 2005. The Governments of Finland, Sweden and Norway agree to continue work on a Nordic Sami Convention, initially through continued work at the national level on follow-up of public hearings and relevant

[1] In the budget resolution for 2008, the Sami Parliament decided that the Sami Development Fund would be abolished. The arrangement would be replaced by *søkerbaserte tilskudd for næringsutvikling* [industrial development grants]. The geographical scope is the same as before.

impact assessments. A working group consisting of representatives from the Ministry of Labour and Social Inclusion, the Ministry of Justice and the Police, the Ministry of Foreign Affairs and Sámediggi has worked on Norway's follow-up of the draft convention, and submitted its report on 3 October 2007. It is aimed that the Sami ministers and presidents of Sami parliaments will clarify their positions before the next joint meeting in autumn 2008.

The draft convention prepared by a Nordic expert group takes as its point of departure that the Sami are indigenous peoples in Finland, Sweden and Norway. The draft has been prepared on the basis of the international instruments that the three countries are bound by. The proposed purpose of a Nordic Sami Convention is to "affirm and strengthen such rights for the Sami people that it may secure and develop its language, its culture, its industries and its social life with the least possible regard to national borders", cf. the expert group's draft of article 1 of the Convention.

In the draft of the Nordic Sami Convention, the right of the Sami to self-determination is laid down in article 3. The draft convention also contains provisions that aim to define the right to self-determination. Of central importance are the provisions concerning the authority of the Sami parliaments in decision-making processes. The draft convention assigns authority of varying degrees of co-determination to the Sami parliaments of Sweden, Finland and Norway according to the importance of the matter concerned for Sami interests (cf. article 14 ff.). Firstly, the right is laid down of the Sami parliament to make independent decisions where the Sami parliament has the power to do so in accordance with national or international law (article 15). Further, in questions of major importance to the Sami, negotiations shall be held with the Sami parliament before decisions on matters are made by a public authority (article 16). The draft also provides a right to express opinions and a right for the Sami parliament to be represented on public boards and committees (article 17). The Sami parliament shall further be given the opportunity to be heard during the considerations by the national assembly of matters that particularly concern the Sami (article 18). The Sami parliaments' right to represent the Sami internationally is laid down in article 19 of the draft. Further work on the draft may be an important contribution to clarification of the meaning of the right of the Sami to self-determination.

Annex II

Statement in explanation of vote by the representative of Norway following the adoption in the General Assembly of the Declaration on the Rights of Indigenous Peoples, on 13 September 2007

The rights of indigenous peoples are of key importance to Norway. We therefore welcome the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, which we believe will help promote the protection of the rights of indigenous peoples worldwide. The Declaration sets a standard of achievement to be pursued in a spirit of partnership and mutual respect. In Norway, we will do this in partnership with the Sámi people in Norway, who are recognized as indigenous people by the Government.

The recognition of the right to self-determination referred to in this Declaration requires that indigenous peoples have full and effective participation in a democratic society and in decision-making processes relevant to the indigenous peoples concerned. Several articles in the Declaration specify how the right to self-determination may be exercised. The Declaration emphasizes that the right to self-determination shall be exercised in conformity with international law.

Consultations with the peoples concerned is one of the measures outlined in the Declaration. As a State party to International Labour Organization Convention No. 169, concerning Indigenous Tribal Peoples in Independent Countries, Norway has implemented the consultation requirements specified in that Convention. Self-determination is furthermore exercised through the Sámi Parliament, which is an elected body with decision-making and consultative functions within the framework of the applicable legislation. The Government has also signed an agreement with the Sámi Parliament in which it set out procedures for consultations between the Government and the Sámi Parliament.

Norway considers that the Declaration is to be understood within the framework of the United Nations Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by General Assembly resolution 2625 (XXV) of 24 October 1970 (see A/61/PV.107).

For indigenous peoples, the question of land is a crucial issue for indigenous culture and identity. With reference to article 26, we state that for States parties to ILO Convention No. 169, the rights concerned must be understood to refer to the rights specified in that Convention.

As concerns article 30, Norway intends to continue with military activities necessary for upholding general contingency preparedness, including national and allied training and exercises, as we consider these to be justified by a significant threat to public interests.

United Nations E/C.19/2010/12/Add.7

Economic and Social Council

Distr.: General
24 February 2010
English
Original: Spanish

Permanent Forum on Indigenous Issues
Ninth session
New York, 19-30 April 2010
Items 3 and 4 (a) of the provisional agenda*

Discussion on the special theme for the year, "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples"

Human rights: Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Information received from Governments

Colombia

Summary

The present report contains information on the follow-up of the Government of Colombia to the recommendations of the Permanent Forum on Indigenous Issues at its eighth session.**

* E/C.19/2010/1.

** The Government of Colombia has prepared two annexes to this report: Annex I, "Colombian legal standards in favour of indigenous peoples, 1991 Political Constitution", and Annex II, "Fundamental right of indigenous peoples and black communities 'to decide on measures (judicial and administrative) and timing of projects, work or activities within their territory, with a view to protecting their cultural, social and economic integrity and ensuring their right to participation'". The annexes are available on the website of the Permanent Forum on Indigenous Issues (http://www.un.org/esa/socdev/unpfii/es/index.html), and can be consulted at the offices of the Secretariat of the Permanent Forum on Indigenous Issues.

10-25083 (E) 170310 180310

Please recycle

Questionnaire sent to Governments for the preparation of reports to be submitted to the Permanent Forum on Indigenous Issues in advance of its session

I. Summary

1. Colombia is committed to upholding human rights and guaranteeing the fundamental right to equality. With that end in mind, the country has worked to eliminate and punish all forms of discrimination in order to ensure thereby that the rights of indigenous peoples are protected. The process of recognizing, promoting and highlighting the rights and cultures of ethnic minorities has been consolidated through a rich corpus of legislation and jurisprudence as well as Government efforts to realize the effective exercise of those rights.

2. The Government has consistently promoted the right of indigenous communities to self-determination by respecting and disseminating their decisions. The Government of Colombia has established the Prior Consultation Group within the Ministry of the Interior and Justice, with the task of guaranteeing at all times the right to consultation as recognized in Convention No. 169 of the International Labour Organization (ILO).

3. In accordance with the recommendations formulated at the eighth session with regard to the situation of indigenous women, the national Government has made positive strides in protecting the fundamental rights of women victims of forced displacement. Indigenous women have been involved, of course, in that process, which draws on the provisions of Constitutional Court Order No. 092. The Government and international cooperation agencies are allocating additional resources for that purpose. Through the Presidential Advisory Office on Gender Equality (CPEM), the National Government has also formulated an affirmative action policy entitled "Women Builders of Peace and Development", which is the Government's road map to guide policies asserting women's human rights. Since 2003, measures have been undertaken under that policy to protect the fundamental rights of indigenous women.

4. As a part of the assessment of States' progress in respect of the objectives of the Second International Decade of the World's Indigenous People (2005-2014), the Government of Colombia submitted its answers to the relevant questionnaire. The Government believes that participating in that assessment is of the utmost importance since it provides an opportunity to take stock of how effectively indigenous rights are protected and guaranteed.

5. Colombia has a substantial institutional framework to guarantee the rights of indigenous peoples. An extensive body of legislation and public policy is also in place. Colombia has been praised as one of the most advanced States in terms of recognizing the collective rights of indigenous peoples. For further information, a table containing Colombian legislation in favour of indigenous peoples is attached as an annex.

6. Lastly, it is important to draw attention to the difficulties and challenges which institutions face in ensuring the effective enjoyment of indigenous rights owing to geographic conditions and difficult access, lack of infrastructure in certain areas, and the presence of illegal armed groups.

II. Follow-up to recommendations — Permanent Forum on Indigenous Issues at its eighth session

7. The National Government has focused on preventing human rights violations, providing guarantees for the full exercise of the rights of all citizens, promoting and extending respect for those rights, and complying with the country's international commitments in that regard. In particular, Government action has centred on indigenous peoples through a differential approach.

8. Accordingly, measures adopted in response to the recommendations for Governments formulated by the Permanent Forum at its eighth session are set forth below.

A. Indigenous women[1]

9. In accordance with the recommendations made at the eighth session on the situation of indigenous women, it is important to bear in mind that the claims of the indigenous women of Colombia go hand in hand with the protection of collective rights. In that sense, it is not a question of dealing with individual claims from a gender perspective, but rather of balance in the interactions between men and women with a view towards a decent life for the survival of their peoples.

10. From that perspective, the National Government has made progress in terms of compliance with the 2008 Constitutional Court Order No. 092 on the protection of the fundamental rights of women victims of forced displacement, including indigenous women.

11. Work has been under way to develop the "Protection of the Rights of Displaced Indigenous Women" programme in conjunction with indigenous women from all around the country,[2] through a National Coordinating Committee,[3] whose aim is to build and coordinate the process of formulating that programme, guaranteeing effective participation by indigenous women throughout the country.

12. In that regard, it has been agreed to carry out the work in three phases:

(a) Forming and preparing the team that will undertake the socialization process, comprising 39 leaders at the department level;

(b) Area and local socialization meetings for women to develop the outline and elements of the programme over a period of 10 months; and

---

[1] E/C.19/2009/14, paras. 30, 31 and 33.

[2] The workshop was held in Bogotá from 14 to 17 June 2009, and the women there delegated four representatives from the following organizations to form a National Coordinating Committee: the National Indigenous Organization of Colombia (ONIC), the Movement of Indigenous Authorities of Colombia (AICO), the Organization of Indigenous Peoples of the Colombian Amazon-region (OPIAC), and the Tairona Indigenous Confederation (CIT).

[3] This Committee met in Bogotá with support from the Directorate of Indigenous, Minority and Roma Affairs, from 18 to 21 August, to work on the proposal that it would present to the Government, as well as its timetable and budget. On 15 October 2009, the Committee met with the deputy Interior Minister to present the draft proposal. Several alternatives were proposed, which the women would study on 30 October in order to determine the most viable option.

(c) Department meetings to work out the details for each area and launch the programme or final document at the national meeting.

13. It has been an historic step forward for the Colombian State that the indigenous movement has been involved with the high-level coordination efforts for indigenous women, such as women's participation in the Permanent Committee for Consultation.

14. Likewise, it is important to note that non-core resources are already being mobilized by the Government and international cooperation agencies in order to move forward in the implementation of Order No. 092.

15. In addition, CPEM has designed the affirmative action policy "Women: builders of peace and development", the Government's road map governing policies to ensure recognition of the human rights of women. Its guiding principles are equity, equality, participation, respect for the rights of women, respect for international humanitarian law, autonomy, respect for diversity and decentralization.

16. The thematic areas of this policy are:

- Employment and entrepreneurial development
- Education and culture
- Political participation
- Violence against women
- Institutional strengthening

17. In that regard, while developing those areas, CPEM has been working to protect the fundamental rights of indigenous women since 2003; it has met with indigenous women with the participation of ONIC, AICO, the Indigenous Organization of Antioquia (OIA) and OPIAC, and has carried out studies to document the situation of the country's ethnic groups, such as the "Gender analysis of ethnic categories" and the "Update on the situation of the recognition of indigenous women's rights in Colombia", among others.

18. In addition, with a view to encouraging participation by indigenous women within their communities, CPEM carried out three regional workshops with indigenous women in the Sierra Nevada de Santa Marta, Cauca and Amazonas (with the participation of approximately 181 indigenous women), and a central meeting in Bogotá, which gathered together regional experiences relating to the role of indigenous women in the community and the views of international cooperation bodies, indigenous organizations and State bodies competent on the issue, in order to develop an affirmative action plan for indigenous communities focusing on women.

19. In the same way, indigenous women are actively participating in women's community councils, under the theme of "political participation", which are intended to be forums for dialogue for women in departments and municipalities to strengthen their involvement in decision-making on issues that affect them and to facilitate the implementation of the affirmative action policy "Women: builders of peace and development". Similarly, they are also involved in the participatory

councils of women coffee growers (National Federation of Coffee Growers),[4] which aim to empower them with a view to facilitating and strengthening organizational processes, increasing their impact at the local level and, with the support of the committees of coffee growers, at the department and municipal levels.

B. Second International Decade of the World's Indigenous People[5]

20. In accordance with the goal of the Second International Decade of the World's Indigenous People to achieve "the further strengthening of international cooperation for the solution of problems faced by indigenous people [...] by means of action-oriented programmes and specific projects, increased technical assistance and relevant standard-setting activities",[6] the Colombian Government agrees that this evaluation should be viewed as an exercise to help identify the progress that has been made, the lessons learned and best practices, and the areas in which both the international community and Member States must redouble their efforts to promote the satisfactory achievement of the purpose and the goals of the Decade.

21. The Government of Colombia believes that the follow-up to the Second Decade is helping to improve the processes of recognizing, promoting and raising awareness of the rights and culture of ethnic minorities, working in that context to develop programmes, plans, actions and public policies to benefit the special and differential rights of indigenous peoples. That is why it participated in this evaluation.

C. Follow-up to the recommendations of the Permanent Forum on implementation of the United Nations Declaration on the Rights of Indigenous Peoples and to the dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and other special rapporteurs[7]

22. It is useful to note that the United Nations Declaration on the Rights of Indigenous Peoples has the "unilateral support" of the State of Colombia. Therefore, although the Declaration is not a binding instrument for Colombia, it recognizes the historic importance of the Declaration and values all its aspirations.[8] In that regard, Colombia has been strengthening a process of recognizing, promoting and raising awareness of the rights and culture of ethnic minorities, as demonstrated in the present document.

23. Recognition of the rights of indigenous peoples:

(a) Drawing on a rich corpus of legislation and jurisprudence, in addition to Government efforts, significant progress has been made in recognizing the rights of indigenous peoples. In accordance with the 1991 Political Constitution, indigenous

[4] The world's largest NGO in the coffee growing sector.
[5] E/C.19/2009/14, paras. 34 and 40.
[6] General Assembly resolution 59/174, para. 2.
[7] E/C.19/2009/14, paras. 79-83.
[8] Letter from the Minister of External Relations, Jaime Bermúdez Merizalde, addressed to the Secretary-General of the United Nations, Ban Ki-moon. Unilateral declaration of support for the Declaration, 20 April 2009.

communities exercise political representation through earmarked seats. Their authorities are recognized as such. They have collective deeds for their land, and use it according to their ancestral customs. They benefit from affirmative action, including in health, education and culture, and have opportunities to engage in dialogue with the State and the Prior Consultation Group, thereby exercising their fundamental right to participate in the decisions that could affect them directly;

(b) At the same time, a public policy is being agreed with indigenous peoples in order to establish principles, standards and technical components to guide public and private-sector action aimed at ensuring that indigenous peoples living in Colombia exercise their social, economic, political and cultural rights. The purpose is to improve their living conditions, overcome situations marked by discrimination and marginalization, strengthen the organizational process, and ensure the survival of indigenous peoples and of their socio-cultural diversity.

24. Dialogue:

With respect to dialogue, a topic included in the recommendations of the Permanent Forum, it is a Government priority to expand opportunities for dialogue with indigenous communities. With that end in mind, mechanisms have been established for consultation with indigenous peoples, such as the Permanent Committee for Consultation with indigenous peoples and organizations[9] (Decree No. 1397 of 1996); the Indigenous Peoples' Human Rights Commission[10] (Decree No. 1396 of 1996); and the Amazon Region Committee for the Indigenous Peoples of Colombian Amazonia[11] (Constitutional Court, judgement SU-383 of 2003; Decree No. 3012 of 2005).

---

[9] The Committee is the most high-level body for consultation between the State and indigenous peoples represented by indigenous organizations. It is the forum for reaching agreement on all administrative and legislative decisions in favour of indigenous peoples in Colombia. Through the Committee, the following measures have been agreed with indigenous organizations: (i) broadening the participation of indigenous peoples throughout the country, and re-establishing dialogue with the Government; (ii) building public policy concerning indigenous peoples; and (iii) consolidating work methods to organize a programme to guarantee, and 34 plans for safeguarding, the rights of indigenous populations that have been displaced or are at risk of being displaced (Constitutional Court Order No. 004 of 2009).

[10] The Commission met with the indigenous organizations in Bogotá on 14 July 2009 and agreed on specific human rights commitments from the perspective and world view of the indigenous peoples. As a result of the continuous work of the Ministry of the Interior and Justice, in coordination with indigenous organizations and at various forums, the organizations agreed to meet with the Commission and a decision-making quorum was reached. The Commission had not met since 2006 because the indigenous peoples had declared themselves to be in a state of permanent assembly. That situation was remedied when the Government endorsed the principles of the United Nations Declaration on the Rights of Indigenous Peoples at the Durban Conference of 21 April 2009. The next session of the Commission will take place on 22 February 2010 in Bogotá. The National Government hopes that all indigenous organizations will take part, including ONIC, which was absent at the last meeting.

[11] Two meetings were held, on 28 and 29 May and on 3 and 4 November 2009 respectively. In September 2009, the Ministry of the Interior and Justice and the National Hydrocarbon Agency signed Framework Cooperation Agreement 022 on the formulation of public policy, with allocated funds of 398,400,000 pesos, in addition to the National Council on Economic and Social Policy document concerning the indigenous peoples of Colombian Amazonia.

25. Self-determination:

(a) As regards Government action to develop the culture and identity of indigenous peoples, it should be stressed that Colombia recognizes and respects the right of indigenous peoples to free self-determination. Colombia has been one of the few States to have enshrined that right at the constitutional level, 16 years before the adoption of the United Nations Declaration on the Rights of Indigenous Peoples. Article 246 of the Political Constitution of Colombia recognizes that the authorities of the indigenous peoples may exercise judicial functions within their territorial boundaries. That right has become a core component of public policy towards indigenous peoples. It has been recognized and respected since 1991, and has been promoted by the Government of Colombia through each of the consultation mechanisms;

(b) The Government has consistently promoted the right of those communities to self-determination by respecting and disseminating their decisions. The Supreme Council of the Judiciary, whose role is to administer the judicial branch in Colombia, has begun to compile and publish the decisions and rulings of traditional indigenous authorities, classifying them according to the legal issues and communities involved. The ultimate aim is to firmly support the right to self-determination and ensure that it is recognized;

(c) In the same way, the Colombian Government established the Prior Consultation Group under the Ministry of the Interior and Justice, in order to guarantee at all times the right to consultation enshrined in ILO Convention No. 169. This consultation process ensures that members of the indigenous communities have the right to freely pursue their economic, social and cultural development in cases where they could be affected by legislative or administrative measures, or by mining or hydrocarbon exploration directly impacting their communities;

(d) In order to consolidate prior consultation at every level as a fundamental and collective right of ethnic groups, the Government is working through the Ministry of the Interior and Justice to prepare a draft statutory law regulating that process. The draft law will be discussed with the ethnic groups and will take into account each and every possible situation and detail that might arise at the time of its implementation, with a view to bridging the legal gaps that hinder consultations in practice;

(e) Those actions shall be carried out in accordance with the principles of good faith, due process, legitimacy and representativity, intercultural communication and bilingualism, sufficient and adequate information, timely preparation, free participation, legal pluralism, the twin-track approach, coherence, transparency and ethnic pluralism.

26. Openness to extra-conventional mechanisms of the United Nations:

In accordance with its policy of openness and transparency on human rights issues, the Government of Colombia received four United Nations Special Rapporteurs in 2009, including the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, Mr. James Anaya. The United Nations independent expert on minority issues, Gay McDougall, is planning to visit the country in February 2010.

27. Implementation of the recommendations of the Permanent Forum:

(a) In implementing the Forum's recommendations, the Government has found it difficult to cover the entire national territory because of the location of indigenous communities in hard-to-reach areas requiring large-scale efforts involving all kind of resources. Similarly, the lack of infrastructure in some places and the presence of illegal armed groups also limit the Government's ability to guarantee the effective enjoyment of the rights of indigenous peoples;

(b) However, major progress has been made to protect indigenous peoples, including the following:

(i) More robust differentiated measures have been put in place to fight the discrimination and poverty that have affected indigenous peoples by including them within Government policies and plans as most vulnerable population groups, thereby promoting better scenarios of participation, equality and preferential treatment;

(ii) Opportunities have been provided for consensus-building with the representatives of indigenous peoples, promoting human rights and their special rights, including with regard to identity, territory, autonomy, the environment and prior consultation;

(iii) Together with the indigenous peoples, work is under way to draft the public policy document designed to set forth the vision, rights and direction of State authorities, at all levels, as regards attention to and protection, safeguarding and effective enjoyment of their special fundamental rights, both collective and individual;

(iv) A range of mechanisms has been created and implemented to protect and guarantee the rights of indigenous peoples and to prevent all forms of discrimination against them;

(v) Colombia has sought opportunities to cooperate with indigenous organizations, international agencies and State bodies, in order to establish a comprehensive policy that will safeguard the rights of this population and promote their participation and inclusion in society, from a differentiated perspective;

(vi) Joint, inter-agency efforts have been strengthened, boosting the execution of the programmes and plans to protect indigenous peoples, achieving greater coordination among local, regional and national entities.

28. Laws and public policies:

(a) Colombia has been praised as one of the most advanced States in terms of the recognition of the collective rights of indigenous peoples. The Inter-American Development Bank's indigenous legislation index ranks Colombia in first place in terms of the quality of its cultural, economic, territorial and environmental rights legislation for indigenous communities;

(b) In accordance with national legislation, indigenous peoples determine their own political, social and judicial organization, and their authorities are recognized as special public State authorities throughout national territory. Similarly, indigenous reservations have access to the system of distribution of the nation's current revenues, which are allocated to the indigenous communities

collectively by the central Government, so that those resources can be utilized in agreement with municipal administrations to meet the priorities indicated by the indigenous communities. Those provisions of national legislation are in line with the exercise of the right to self-determination, the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions and the right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions, while retaining their right to participate fully, if they so choose, in the political, economic, social and cultural life of the State, rights set forth in articles 4 and 5 of the United Nations Declaration on the Rights of Indigenous Peoples;[12]

(c) Furthermore, in the Colombian electoral system there are special electoral constituencies for indigenous peoples, and specific central institutions responsible for the effective promotion and protection of their rights;

(d) According to the 2005 census, 3.43 per cent of the population of Colombia self-identifies as indigenous. In addition, Colombia has recognized 29 per cent of the national territory as the collective property of indigenous communities, and that property cannot be taken away by proscription, seized or transferred. Indigenous peoples' access to collective or individual land ownership is regulated by legal and administrative provisions guaranteeing that right, in keeping with the State's objectives and with such principles as the social and ecological function of the property;

(e) Colombian law exempts indigenous peoples from compulsory military service under a provision that preserves the cultural identity of our communities;

(f) There are currently 64 indigenous languages in Colombia. The Constitution recognizes the official nature of the languages and dialects of ethnic groups in their territories. In addition, regulations have been included in the educational system in Colombia that allow aboriginal populations to use their languages, transmit their knowledge and preserve their traditions, through an ethnic education policy governed by criteria of inclusion, respect and integration. Such measures are in line with the provisions of article 13 of the United Nations Declaration, which provides that "indigenous peoples have the right to revitalize, use, develop and transmit to future generations their histories, languages, oral traditions, philosophies, writing systems and literatures";[12]

(g) In the field of education, the indigenous peoples of Colombia are protected under Law No. 115 of 1994, which in articles 55 and 56 establishes that education in the ethnic groups shall be guided by the general principles and purposes of education established in the Law, and in addition shall take into account the criteria of integrality, interculturality, linguistic diversity, community participation, flexibility and progressiveness. Its purpose shall be to ensure the processes of identity, knowledge, socialization, protection and adequate use of nature, community systems and practices of organization, use of vernacular languages, teacher training and research in all spheres of culture;[13]

(h) Colombia wishes to renew its commitment to the rights of indigenous peoples, reiterate its willingness to adopt effective measures to acknowledge and

[12] General Assembly resolution 61/295.

[13] Law No. 115 of 1994, regulations of the educational sector, decrees of 1994.

protect the enjoyment of those rights and state that it shares the spirit and principles of the United Nations Declaration on the Rights of Indigenous Peoples.

29. Institutional framework:

(a) Colombia has made a commitment to respect the human rights of all its citizens and to guarantee the fundamental right to equality. This was a decades-long effort to which civil society contributed immensely, and which culminated in the adoption of the 1991 Political Constitution;

(b) The Political Constitution adopts a multidimensional approach to equality since it not only places emphasis on formal equality, but also calls for the attainment of material equality; embodies the concept of equality of opportunities; incorporates the principle of equity; includes the criterion of difference; and calls for affirmative action to be taken in favour of groups that are discriminated against or marginalized and for special protection for highly vulnerable persons;[14]

(c) In the executive branch of government, the Vice-President of the Republic oversees the Government's policy on human rights. There is also a Directorate of Indigenous, Minority and Roma Affairs in the Ministry of the Interior and Justice,[15] an Ethnic and Gender Affairs Unit in the Directorate-General for

[14] The 1991 Constitution recognizes and protects ethnic and cultural diversity (article 7); promotes the adoption of measures "in favour of groups that are discriminated against or marginalized" (article 13); and provides that "the communal lands of ethnic groups are inalienable, imprescriptible and guaranteed against seizure" (article 63).

[15] In this context, article 5 of Decree No. 4530 of 2008 established the Directorate of Indigenous Affairs in the Office of the Deputy Minister of the Interior. Article 13 of that decree establishes the functions of the directorate as follows:

1. To propose policies designed to recognize and protect ethnic and cultural diversity, especially of indigenous and Roma peoples;
2. To safeguard the ethnic and cultural integrity of the indigenous and Roma peoples and to promote their fundamental rights;
3. To design programmes to provide technical and social assistance and policy support for the indigenous and Roma communities and lesbian, gay, transgender and bisexual people;
4. To provide inter-institutional coordination to establish the means for participation by indigenous peoples set forth in legislation, and to promote the participation of organizations and authorities that represent them;
5. To support the Prior Consultation Group in consultations on development projects that affect indigenous and Roma communities;
6. To promote conflict resolution in accordance with the traditions and customs of indigenous and Roma communities;
7. To maintain the register of the traditional indigenous authorities recognized by their respective communities, and of associations of indigenous authorities;
8. To promote a differential approach in the work of the Ministry and the other State agencies that serve the needs of the indigenous and Roma population;
9. To advise the offices of governors and municipal mayors on giving due attention to indigenous communities, the Roma people and lesbian, gay, transgender and bisexual people;
10. To carry out the socio-economic studies necessary for the designation, amelioration, expansion and restructuring of indigenous reservations;
11. To coordinate, with the Ministry of the Environment, Housing and Territorial Development and the Colombian Institute for Rural Development, the establishment of environmental agendas in conjunction with indigenous communities;
12. To plan and implement procedures to award titles to the lands of indigenous communities and lands necessary for communities affected by natural and man-made disasters, coordinating with agencies of the Ministry and bodies involved;

Social Promotion of the Ministry of Social Protection, and a Directorate of Population Groups in the Ministry of Culture, whose task is to advise the Minister on the formulation of policies, plans and projects for the recognition and inclusion of the cultural specificities of various population groups, ethnic groups, and persons with disabilities or those living in vulnerable conditions;

(d) Colombia also has an Office of the Deputy Ombudsman for Ethnic Minorities and an Office of the Deputy Procurator for Human Rights and Ethnic Affairs, which serve as independent oversight bodies;

(e) In addition, the Constitutional Court created under the 1991 Constitution has taken a series of decisions addressing the situation of indigenous peoples and women belonging to the groups mentioned above, following complaints about the violation of their fundamental rights. Notable examples are Orders No. 004[16] and No. 092 of 2009, which give comprehensive instructions to the National Government to give greater attention to the situation of the indigenous populations and women who were displaced or at risk of displacement, something which the Government has been doing with greater responsibility;

(f) In the legislative branch of government, the political participation of minorities in the country is ensured through Law 649 of 2001, regulating article 176 of the Constitution. In that connection, a special national constituency will be established to ensure that ethnic groups, political minorities and Colombians residing abroad are elected to the House of Representatives. Five seats will be assigned to this constituency and distributed as follows: two for black communities, one for indigenous communities, one for political minorities, and one for Colombians residing abroad.

---

13. To propose draft laws, draft legislative acts or draft legislative amendments and to analyse regulations and jurisprudence in coordination with the Office of Legal Codification and the Office of Legislative Affairs in their submission, discussion and follow-up in areas in which they are competent;
14. To participate on the boards, commissions and committees and in technical groups of which it is a member or when so delegated by the Minister or Deputy Ministers;
15. To receive petitions, requests and consultations on matters within its competence;
16. To perform such other functions as may be assigned in accordance with the nature of the body.
The Directorate of Indigenous, Minority and Roma Affairs also proposes policies for the recognition and protection of ethnic and cultural diversity, in particular for indigenous and Roma communities and lesbian, gay, transgender and bisexual people.

[16] To establish a framework for monitoring the implementation of judgement T-025 of 2004, which declared the existence of an unconstitutional state of affairs in regard to the situation of displaced people, the Constitutional Court issued Order No. 004 of 2009 on protecting the fundamental rights of indigenous peoples and persons displaced by armed conflict or at risk of forced displacement, in order to protect their fundamental rights. As a result, a series of measures is being established that will be taken by the Government to protect indigenous peoples who have been displaced or are at risk of being displaced:
(a) Formulation and implementation of a programme of guarantees for the 102 indigenous peoples in Colombia;
(b) Preparation and implementation of safeguard plans for 34 indigenous peoples established by the Court.

D. Culture and identity

30. With regard to the topic of culture and identity, which will be addressed during the ninth session of the Forum, the Government has been making progress in keeping with the principle of diversity and multiculturalism.

31. There is great linguistic wealth among the country's indigenous communities; 64 languages, belonging to 22 indigenous language families, have been identified and serve as official languages in the territories in which they are used.

32. In that connection, it should be pointed out that the Ministry of Culture in February 2008 launched the Programme to Protect Ethno-linguistic Diversity, to contribute to the adoption of a policy to protect and promote the languages of ethnic groups in Colombian territory, in cooperation with representatives of the people concerned.

33. This programme develops activities for raising public awareness among citizens, improving information and strengthening institutions. Its objectives are:

- To raise the awareness of ethno-linguistic groups about the value of using their native languages, so that they can develop plans for strengthening those languages;
- To raise national public awareness of the value of linguistic diversity;
- To update the legislative and regulatory framework for the official recognition and protection of the languages;
- To identify or create sources of resources in the State and in its territorial entities to support and promote efforts designed to strengthen native languages;
- To create new advisory, support and monitoring bodies for concerted linguistic policies that are developed;
- To determine precisely the level of vitality of each language, identify obstacles for its transmission, and specify timely actions to be taken in schools, communication media, etc.;
- To foster the advancement of scientific knowledge of the languages, focusing in particular on training native speakers to carry out research work;
- To promote the collection of appropriate documentation of these languages, with special priority given to those that are in danger of extinction.

United Nations E/C.19/2010/12/Add.8

Economic and Social Council

Distr.: General
3 March 2010
English
Original: Spanish

Permanent Forum on Indigenous Issues
Ninth session
New York, 19-30 April 2010
Items 3 and 4 (a) of the provisional agenda*

Discussion on the special theme for the year: "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples"

Human rights: implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Information received from Governments

Guatemala

Summary

The present document contains information regarding follow-up by the Government of Guatemala on the recommendations of the Permanent Forum at its eighth session.

* E/C.19/2010/1.

10-25682 (E) 250310 290310

Please recycle

I. Response to the recommendations made to Governments by the United Nations Permanent Forum on Indigenous Issues at its eighth session related to one or more items of its mandate/agenda and the recommendations made at its previous sessions[1]

A. Economic and social development of indigenous peoples, alternative sources of income[2]

1. According to the report of the Government of Guatemala prepared in response to the questionnaire of the secretariat of the Permanent Forum on Indigenous Issues, a "Midterm evaluation of the Second International Decade of the World's Indigenous People, 2005-2014", over the past five years (2004-2009), the Governments of Guatemala, in line with their public policies, plans, projects and activities, have addressed the following issues, among others related to the rights and requirements of indigenous peoples:

- Evaluation of rural development policies, strategies, programmes and plans related to poverty to ensure their ethnic, cultural and gender relevance
- Promotion of production and entrepreneurial linkages with the goal of ensuring the inclusion of the indigenous population
- Capacity-building in communities, municipalities and subregions in the preparation of assessments and strategic planning
- Promotion of ethnically and culturally relevant social investment programmes that encourage equal opportunities

2. The information on the treatment of the issues related to indigenous peoples referred to above covers two Government administrations: the first, from January 2004 to January 2008; and the second, from January 2008 to January 2012, these being the third and fourth administrations after the signing of the peace agreements.

3. The first administration, as indicated in the 2004-2008 Government Plan, focused on the need to retake the path towards the construction of a prosperous and supportive Guatemala. To achieve that goal, it defined actions based on consensus: ensuring honest government, transparency and austerity and re-establishing the peace agreements as the guiding framework for the activities of the State.

4. The guidelines of that Government established the principles of solidarity and inclusion, defining among the actions to be promoted the constant effort to reduce poverty and promote the practice and experience of interculturality, and the political reform of the State through respect for human rights, a strengthening of democracy and political reform, effective exercise of the rule of law, modernization of the civil service and decentralization and participation, as preconditions for the promotion of citizenship.[3]

---

[1] See E/2009/43, paras. 9, 15, 16, 19, 20, 21, 23, 30, 31, 33, 34, 36-40, 47, 48, 52-62, 67, 79-83, 86, 88, 94, 97-99.

[2] Ibid., para. 9.

[3] Assessment of the institutionalization of the identity and rights of indigenous peoples in the executive branch, 2004-2007.

5. In the 2008-2012 administration of Álvaro Colom, the Government plan included four strategic programmes that were the fundamental pillars of government management: solidarity, governance, productivity and regionalization. Their cross-cutting themes consider interculturality, the prioritization of the poorest, gender equity, investment in infants and children, ethics and morals, environmental conservation, civic participation and respect for human rights.

6. The policies current in 2009 that include criteria for addressing the rights of indigenous peoples, including those related to measures to achieve sources of economic income, the conservation of natural resources and the protection of biodiversity, are:

- National Policy for the Advancement and Integral Development of Women 2008-2023
- Public Policy for Coexistence and the Elimination of Racism and Racial Discrimination
- Public Policy for the Comprehensive Protection of Children and Adolescents
- National Policy of Comprehensive Rural Development
- National Policy for the Decentralization of the Executive Branch
- National Food Security and Nutrition Policy
- National Human Rights Education Policy 2006-2015
- National Human Rights Policy 2006-2015
- Social Development and Population Policy
- National Policy for the Development of Micro-, Small- and Medium-Sized Enterprises
- Policy and Plan for Gender Equity in Higher Education 2006-2014
- Agricultural Policy 2008-2012
- Forestry Policy of Guatemala
- Education Policies 2008-2012
- Framework Environmental Management Policy
- National Policy on the Integrated Management of Water Resources

7. In addition to the System of Urban and Rural Development Councils, especially at the community level, examples of good practices include the Guatemalan Indigenous Development Fund (FODIGUA),[4] which is a decentralized national entity with a bipartite structure involving Government and Maya organizations. Geographically, it covers the various Maya linguistic regions and its aim is to support and strengthen the process of human development that is sustained and managed by the indigenous peoples themselves in their communities and organizations as part of their world vision for the improvement of their quality of

[4] The Guatemalan Indigenous Development Fund was established by Government Agreement 435-94, issued on 20 July 1994 and amended by Agreements 500-95, 354-96, 149-97 and 158-2006.

life through the execution and financing of their economic, social and cultural programmes and projects.

8. The Fund's objectives include promoting, supporting and funding projects for social development, social production, infrastructure, institution strengthening, human resources training and cultural development and managing projects to obtain national and international financial resources and technical assistance.

9. The System of Urban and Rural Development Councils is the nucleus that promotes and strengthens the participation and inclusion of indigenous peoples in the design of the plans and projects to be executed in the fields of education, culture, health, human rights, the environment and social and economic development.

10. The preamble to the Urban and Rural Development Councils Act states that "The System of Development Councils must be governed by the principles of the equal dignity and rights of all social actors and must be effective in conditions of equitable opportunities for participation, under peaceful coexistence, in the framework of a functional, effective and participatory democracy and in the decision-making processes and the planning and execution of public development policies".

11. As regards the substantive aspects of Legislative Decree No. 11-2002, in chapter I ("Nature, principles and purpose"), article 1 ("Nature"), it emphasizes that "the System of Development Councils is the principal means for the participation of the Maya, Xinca, Garifuna and non-indigenous population in public affairs, in order to pursue the democratic development planning process, taking into account the national, multi-ethnic, multicultural and multilingual unity of the Guatemalan people".

12. Another example of the participation of indigenous peoples in the formulation of concrete public policies is the experience of the Ministry of the Environment and Natural Resources, based on the Policy of Preservation, Protection and Improvement of the Environment and the Natural Resources (Government Agreement 63-2007).

13. In the case of the Ministry of the Environment and Natural Resources, there was a process with which it began broad and ongoing participation by the different national sectors, especially through the Development Councils and the municipal governments, to review future challenges, allocate resources and establish time frames for execution, to ensure that sustainable development would be obtained with the collaboration of all national actors to benefit the population.

14. With regard to its valuations, the Ministry of the Environment and Natural Resources emphasized that the primary purpose of its efforts to strengthen information and analysis of Guatemala's environment and natural resources was to value them and link them to social, cultural, economic and ecological development.

15. The weighting assigned was not only based on an economic estimate, but also took into account social, cultural and ecological perspectives, which facilitates the sustainable use of natural resources and the environment by the various sectors and the general population, enabling them to satisfy both their physical and psychological needs.

16. The Ministry of the Environment and Natural Resources noted that "as the country's natural wealth is part of the planet's essential systems for preserving life,

valuation should also focus on resources that support the health of the ecosystem by recognizing their intrinsic value and promoting their conservation for future generations, in the same way as a valuation of nature from the perspective of the indigenous peoples (Maya, Garifuna and Xinka) living in the national territory".

17. Environmental planning of land use promotes the recognition and valuation of forms based on custom and tradition, as long as they are in harmony with the sustainable management of natural resources.

18. The National Council on Protected Areas (CONAP) has a Department of Indigenous Peoples and Civil Society, which is responsible for addressing issues relating to indigenous peoples and civil society that affect the management and administration of the country's protected areas. An example of inclusion is the drafting of the bill on the management category of communal lands and the Biodiversity Conservation and Management Policy.

19. With regard to developing alternative sources of income for indigenous peoples, the Rural Economic Development Programme has been launched. It was designed to support national economic development, primarily in rural areas and its purpose is to help increase the income of the rural population, which is mainly indigenous, by strengthening and establishing production chains. Investments are made to remove existing bottlenecks in order to make rural enterprises and areas more competitive.

20. The specific objectives are: (a) to improve the competitiveness of rural-based production chains with broad indigenous participation; and (b) to strengthen the institutional capacity of public entities participating in the project in order to adopt a participatory land management model with indigenous involvement.

21. One of the Government Programme's strategies for meeting this goal is for public agencies, together with the private sector, to provide market access and multisectoral financial investments which are coordinated in both space and time. These investments are directly linked to requests from rural productive organizations which have a market for their products and therefore have great potential for becoming permanent members of a production chain.

22. For the quality of rural life to be improved, productive and economic opportunities, capacities and assets must be increased as part of a competitive framework that enables stakeholders in rural areas to play an active role in local, national and international markets.

23. The selected territories are: San Marcos, Huehuetenango, Sololá, Quetzaltenango, Totonicapán, Chimaltenango, Sacatepéquez and Alta Verapaz. These departments have Kiche', Kaqchikel, Mam, Q'eqchi and other indigenous ethnic populations.

24. One of the Programme's requirements is that at least 80 per cent of its beneficiaries must be indigenous. Coverage will soon be extended to the departments of Baja Verapaz and Quiché, where there are economic activities in need of enhancement.

25. The incorporation of the ethnic perspective at every stage of implementation has been an important aspect of this Programme. This has included a study of relevant international experiences in providing marketing support from the

perspective of indigenous peoples' rights and in identifying forms of community organization used for marketing and technology use.

B. Community consultations, obligations arising from the United Nations Declaration on the Rights of Indigenous Peoples and International Labour Organization Convention (ILO) No. 169[5]

26. The main laws applying to community consultations which the various sectors and social actors have taken into account are: ILO Convention No. 169, in particular article 15; the Political Constitution of the Republic of Guatemala[6] and the Municipal Code.[7]

27. The table below shows data provided by the Pastoral Commission Peace and Ecology (COPAE)[8] on community consultations carried out in recent years on the basis of existing legislation, for projects that impact the rights and interests of indigenous peoples.

Table
Community Consultations
2005-2008

		Locations
No.	*Date*	*Municipalities-department*
1	14-18/05/05	Comitancilio, San Marcos
2	18/06/05	Sipacapa, San Marcos
3	25/06/05	Río Hondo, Zacapa

[5] See E/2009/43, para. 15.

[6] Article 66. Protection of ethnic groups. This article recognizes that Guatemala is made up of different ethnic groups including indigenous groups of Mayan ancestry. The State recognizes, respects and promotes their ways of life, customs, traditions and forms of society.

[7] Article 63. Community consultation. When it is advisable to consult community opinion because of an important issue, the Municipal Council, with the vote of two thirds of its members, may agree to hold such a consultation. Article 65. Consultations with indigenous communities or municipal authorities. When there is an issue that affects the rights and interests of the municipality's indigenous communities or of their own authorities, the Municipal Council shall carry out consultations at the request of those indigenous communities or authorities. This may involve methods based on the customs and traditions of the indigenous communities. Articles 64, 65 and 66. Modalities of consultation and forms of implementation. Specially designed forms may be used for a particular consultation. Notice is given, specifying the issue to be discussed and the date and venues of the consultation, or the communities involved may apply the methods of their own legal system.

[8] Commission of the Social Pastorate of the Catholic Diocese of San Marcos. Its main mission is to support the claims of indigenous peoples in the San Marcos department who consider themselves adversely affected by the natural resource exploitation (mining and hydroelectric) policies of the State of Guatemala, which has granted concessions and licences to transnational corporations. One of its objectives is to contribute to strengthening the rule of law through democratic actions such as community consultations.

		Locations
No.	*Date*	*Municipalities-department*
4	25/07/06	Colotenango, Huehuetenango
5	25/07/06	San Juan Atitán, Huehuetenango
6	25/07/06	Concepción Huista, Huehuetenango
7	25/07/06	Todos Santos Cuchumatantes, Huehuetenango
8	27/07/06	Santiago Chimaltenango, Huehuetenango
9	29/08/06	Santa Eulalia, Huehuetenango
10	13/02/07	Concepción Tutuapa, San Marcos
11	30/03/07	San Pedro Necta, Huehuetenango
12	20/04/07	Ixcán, Quiché
13	12/05/07	San Antonio Huista, Huehuetenango
14	13/06/07	Ixchiguán, San Marcos
15	23/06/07	Barillas, Huehuetenango
16	11/08/07	Nentón, Huehuetenango
17	22/09/07	San Ildefonso Ixtahuacán, Huehuetenango
18	26/10/07	San Sebastián Huehuetenango, Huehuetenango
19	01/12/07	San Miguel Acatán, Huehuetenango
20	18/04/08	Sibinal, San Marcos
21	13/05/08	San Juan Ixcoy, Huehuetenango
22	14/05/08	Comitancillo, San Marcos
23	16/05/08	Tacaná, San Marcos
24	12/06/08	Tajumulco, San Marcos
25	27/06/08	Tectitán, Huehuetenango
26	04/07/08	San José Ojetenam, San Marcos
27	13/07/08	Chiantla, Huehuetenango
28	26/07/08	Jacaltenango, Huehuetenango
29	06/08/08	Santa Ana Huista, Huehuetenango

		Locations
No.	*Date*	*Municipalities-department*
30	30/09/08	Tejutla, San Marcos
31	03/10/08	Aguacatán, Huehuetenango
32	17/10/08	San Pedro Soloma, Huehuetenango

Source: Compiled on the basis of data from COPAE.

28. Community consultations are not binding in nature at this time (January 2010). In order to address the issue of consultations with indigenous peoples, the Congress of the Republic considered, on 18 August 2009, bill No. 4051 on an initiative to approve the law on consultation with indigenous peoples, which was sent to the Indigenous Peoples Commission so that it could consider it and issue an opinion.

29. On 23 September 2009, the legislative Commission referred to issued a favourable opinion concerning bill No. 4051, emphasizing among the background information that it had "studied its contents in detail, for which purpose it consulted specialized legal bodies, prepared a draft text and submitted it for consultation and discussion to various groups representing indigenous peoples. This was done not only to ask for their opinion but also to collect input for the draft from those representatives in order to enhance the vision set forth in the text and also to gain certainty, as far as possible, that it would be feasible and effective for any consultations that may take place".

30. According to the comments of the Commission issuing the opinion, "In its analysis of the bill under review, the Indigenous Peoples Commission observes that the initiative is intended to comply with the requirements of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries; the initiative has therefore established appropriate precepts and procedures for the exercise of the right to consultation and to determine the legal impact of the outcome on administrative or legislative decisions which affect or may affect the rights or ethnic and cultural integrity of indigenous peoples, communities and authorities. This is all without prejudice to other inherent rights of indigenous peoples and communities which may not be expressly included in the law".

31. Similarly, the Commission of the Congress of the Republic of Guatemala appreciated that the areas included are also covered by the provisions of the Agreement on Identity and Rights of Indigenous Peoples.[9] The deputies who are members of this legislative body also appreciated the fact that the provisions of the bill took into account the views expressed by the Constitutional Court on the issue of community consultations.

32. The legislative opinion emphasizes that the purpose of the bill is to regulate the exercise of the right to consultation of indigenous peoples and communities and to make the consultation process mandatory. The deputies noted that the establishment of a council for indigenous consultations as an autonomous body with

[9] An agreement that is part of the Peace Agreements, which were recognized as State commitments through the Peace Agreements Framework Act.

a legal personality and its own assets was under consideration in order to facilitate achievement of the bill's objective.

33. The current situation is that the approval process for the corresponding legislative decree will continue when bill No. 4051 is returned to the plenary of the Congress of the Republic. Approval requires the favourable vote of over two thirds of all deputies.

C. State vigilance to ensure corporate compliance with relevant laws and standards[10]

34. In addition to enacting relevant laws to ensure that corporations fulfil their obligations, such as the Mining Act (legislative decree 48-97),[11] the Government of Guatemala encourages and undertakes such initiatives as the memorandum of understanding signed on 21 August 2009 by the Congress's Special National Commission for Transparency, Citizens Action, the Guatemalan chapter of Transparency International and the Centre for Environment, Legal and Social Action of Guatemala (CALAS). The letter of understanding sets out the responsibilities of the signatories as follows:

- To verify and investigate the awarding of operating licences to the cement factory in San Juan Sacatepéquez and related companies, as well as to the Marlin Project in San Miguel Ixtahuacán, San Marcos
- To verify and investigate the level of citizen participation and the transparency of the process
- To verify whether the environmental impact study incorporates all the necessary mitigation and environmental protection measures for the type of extraction involved
- To evaluate the monitoring, control and transparency of the process
- To draw up a comprehensive report[12]
- To make recommendations

[10] See E/2009/43, para. 16.

[11] Regulates all prospecting, exploration, exploitation and general mining activities. The Ministry of Energy and Mining is the State body responsible for devising and coordinating Government policies, plans and programmes for the mining sector, regulating and settling all administrative matters, and ensuring that this law and its regulations are implemented.

[12] The Special National Commission for Transparency submitted a report to the President of the Congress (23 October 2009) entitled: "*Informe de investigación y verificación del proceso de autorización de las licencias ortogadas a la Cementera en San Juan Sacatepéquez y empresas afines*" (Investigation and verification report on the awarding of licences to the cement factory in San Juan Sacatepéquez and related companies).

D. Recognition of the presence and participation of indigenous peoples in mining activities and infrastructure and development projects[13]

35. Since the signing of the Peace Accords, the Government of Guatemala has carried out various efforts to strengthen the organized social participation of Guatemalan citizens from different backgrounds.

36. The System of Urban and Rural Development Councils is one of the forums which have been created or strengthened strategically by reforming the Urban and Rural Development Council Act (Legislative Decree 11-2002), the Municipal Code (Legislative Decree 12-2002) and the General Decentralization Act (Legislative Decree 14-2002).

37. The responsibilities of the Presidential General Secretariat for Planning (SEGEPLAN) and the Technical Secretariat of the System, particularly at the national, regional and departmental levels, are laid down in the Urban and Rural Development Council Act.

38. The functions of the System of Urban and Rural Development Councils have been systematically strengthened through a process that specifically includes the provision of support to help representatives of indigenous peoples participate in the System.

39. The assemblies have been advised on how to elect representatives of indigenous peoples in various departments, and regional meetings have been held to ensure that indigenous peoples play a stronger role in the System of Urban and Rural Development Councils.

40. Guatemala has gained experience in formulating policies relating to the participation of indigenous peoples, as exemplified by the National Policy for the Advancement and Integral Development of Women 2008-2023, the Public Policy in Favour of Coexistence and the Elimination of Racism and Racial Discrimination against Indigenous Peoples, and the National Comprehensive Development Policy approved in May 2009.

E. Free, prior and informed consent of indigenous peoples[14]

41. In addition to bill No. 4051 providing for the approval of the law on consultation with indigenous peoples, the Congress considered on 11 August 2009 the proposal to approve General Act No. 4047 on the human rights of the indigenous peoples of Guatemala,[15] which is pending the views of the commission on legislation and constitutional issues and the commission on indigenous peoples.

---

[13] See E/2009/43, para. 19 and articles 19, 23 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples.

[14] Ibid., paras. 20, 37 and 97.

[15] One of the reasons given for the legislative proposal is that the Guatemalan legal system recognizes that International Labour Organization Convention No. 169 on indigenous and tribal peoples, which has been in effect in the country since June 1996 and obliges Guatemala to facilitate the transformation and adaptation of its existing national laws and to respect the rights of indigenous peoples.

42. Both legislative proposals have provisions for promoting and facilitating the free, prior and informed consent of indigenous peoples on projects and activities affecting their development, participation in public decisions, way of life and cultural rights.

43. Other pieces of legislation include the Mining Act (Legislative Decree 48-97), which requires that information should be provided on mining activities. Chapter III (administrative procedures), article 45 (edicts) provides that: "For applications for an operating licence, the Directorate shall, at the expense of the applicant, order the publication of edicts, for one time only, in the Official Journal and in another publication with wider circulation in the country. Once the Ministry receives the edicts, it will issue a decision within a period of thirty days".

44. Article 46 (opposition) provides that: "Those who consider themselves adversely affected by an application for a mining right may oppose the granting of said mining right by formally notifying the Directorate of their opposition at any time prior to the award decision ...".

F. Patents for products derived from indigenous peoples' resources[16]

45. One of the country's economic policies is to increase the competitiveness of its products on the international market. Guatemala has made many efforts to meet international certification requirements and would therefore consider it an added value to satisfy the patent requirements recommended by the Permanent Forum.

46. It will also consider it an opportunity not only to guarantee respect for the rights of indigenous peoples, but also to dignify their traditional knowledge through its dissemination.

G. Priorities of indigenous women[17]

47. With regard to the priorities of indigenous women and the guidelines for the formulation of public policy, the Presidential Secretariat for Women (SEPREM), as an advisory body and developer of public policy, ensured that indigenous women participated in all areas of the National Policy for the Advancement and Integral Development of Women and in the Equal Opportunities Plan 2008-2023. It also received input from their organizations in the process of drawing up those instruments.

48. The Office of the Defender of Indigenous Women (DEMI) also has a very important role to play. Its mandate is to promote, provide training in, disseminate information on, defend, protect and monitor the observance of the rights of indigenous women, starting with the Peace Accords and international treaties and covenants ratified by the State of Guatemala.

49. DEMI uses specialists to provide free legal advice and social services to indigenous women in their native languages. It also makes public policy proposals based on the real situation and needs of indigenous women to help improve their conditions.

---

[16] See E/2009/43, paras. 21 and 23.

[17] Ibid., para. 33.

50. The Institute of Public Criminal Defence (IDPP), pursuant to a mandate derived from article 19 of Decree 22-2008 of the Congress, and the Act against Femicide and Other Forms of Violence against Women, established a free legal assistance service providing public defence lawyers to advise, assist and accompany women, children and adolescents who are victims of violence in all its forms.

H. Participation in the midterm evaluation of the Second International Decade of the World's Indigenous People[18]

51. Institutionally, the Secretariat for Peace (SEPAZ) and the Presidential General Secretariat for Planning (SEGEPLAN), specifically its multiculturalism directorate, as well as the office of the Indigenous Inter-institutional State Coordinator (CIIE) play a major role in gathering the opinions of indigenous peoples.

52. CIIE is a political coordination and consultation body made up of permanent or substitute representatives of State institutions, whose mandate specifically concerns indigenous peoples. It started with informal meetings in 2003 and is now a forum for analysis, discussion and proposals on topics that affect or benefit the Maya, Garífuna and Xinca peoples of Guatemala. It is made up of 25 entities, mostly from the executive branch, providing considerable diversity for the training of officials and civil servants representing the participating institutions and their functional characteristics.

53. The members of CIIE are composed of male and female indigenous and non-indigenous designated representatives holding positions in institutions and programmes created to focus specifically on indigenous peoples. Indigenous officials or civil servants holding positions in State institutions may also become members at the invitation of CIIE and serve as long as they hold those positions.

54. Structurally, CIIE comprises a plenary assembly, a coordinating committee, an executive secretariat and working committees.

55. However, the State of Guatemala must recognize that there were weaknesses in its efforts to promote and facilitate direct and active participation in the midterm evaluation of the Second International Decade of the World's Indigenous People, owing to the limited financial resources earmarked for this purpose.

I. United Nations Declaration on the Rights of Indigenous Peoples as a human rights instrument[19]

56. Guatemala is going through a legal and political transitional period in which it is adjusting to the reality and configuration of current society. This process of change is designed, inter alia, to guarantee the full exercise of the rights of indigenous peoples.

57. The State of Guatemala endeavours to pass legislation based on constitutional standards and respect for international law in the area of human rights.

---

[18] Ibid., para. 34.

[19] Ibid., para. 40.

58. One of the reasons given for the enactment of new laws such as the General Act on the Rights of Indigenous Peoples of Guatemala (Legislative Proposal 4047) was the importance of constitutional articles 66 (Protection of ethnic groups), 58 (Cultural identity), 67 (Protection of indigenous land and agricultural cooperatives) and 44 (Rights inherent in the human person).

59. Another key reason was that article 46 of the Political Constitution of the Republic confirms the pre-eminence of international law in the field of human rights.

60. In addressing the rights of indigenous peoples, both the executive branch (which has the power to propose laws) and the legislative branch (which passes laws), take into account the fact that the United Nations Declaration on the Rights of Indigenous Peoples (signed in September 2007) sets out the elements of the rights and obligations that States Members of the United Nations must observe and develop for indigenous peoples.

61. The work of Guatemala's institutions and its public policies are also consistent with the objectives of the Declaration. This can be corroborated by examining the structures and areas of work of agencies such as the Secretariat for Peace, the Presidential General Secretariat for Planning and the National System of Urban and Rural Development Councils (already described in responses to other questions in this questionnaire).

62. The policies current in 2009 that include criteria for addressing the rights of indigenous peoples are:

- National Policy for the and Integral Development of Women 2008-2023
- Public Policy for Coexistence and the Elimination of Racism and Racial Discrimination
- Public Policy for the Comprehensive Protection of Children and Adolescents
- National Policy of Comprehensive Rural Development
- National Policy for the Decentralization of the Executive Branch
- National Food Security and Nutrition Policy
- National Human Rights Education Policy 2006-2015
- National Human Rights Policy 2006-2015
- Social Development and Population Policy
- National Policy for the Development of Micro-, Small- and Medium-Sized Enterprises
- Policy and Plan for Gender Equity in Higher Education 2006-2014
- Policy for the Protection, Assistance and Care of the Guatemalan Community Living Abroad
- Agricultural Policy 2008-2012
- Forestry Policy of Guatemala
- Education Policies 2008-2012

- Public Policy against Trafficking in Persons and for the Integral Protection of Victims
- National Policy against Addiction and Illicit Drug Trafficking
- Framework Environmental Management Policy
- National Policy on the Integrated Management of Water Resources
- National policies relating to culture and sport
- National Policy on the Intangible Cultural Heritage
- Public policies regarding books, reading, writing and libraries

63. Various Guatemalan Government agencies and bodies also disseminate information on international human rights instruments and the United Nations Declaration on the Rights of Indigenous Peoples.

64. Appropriate institutions of the Guatemalan Government that contribute to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples include the Presidential Commission for Coordinating Executive Policy in the Field of Human Rights (COPREDEH), (Government Agreement 486-91); the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala (Government Agreement 390-2002); the Ombudsman's Office for Indigenous Women (Government Agreement 442-2007); the Guatemalan Indigenous Development Fund (FODIGUA) (Government Agreement 20-2005); the Gender and Multiculturalism Unit of the Ministry of the Environment and Natural Resources (Ministerial Agreement 412-2006); the Department of Indigenous Peoples of the Ministry of Labour and Social Security (Ministerial Agreement 364-2003); Channel TV Maya, established through the granting of television channel five to the Academy of Mayan Languages (Government Agreement 756-2007); the National Reparations Commission (Government Agreement 258-2003 and amendments thereto in Government Agreements 188-2004 and 619-2005); the Mayan Sacred Places and Spirituality Unit of the Ministry of Culture and Sport (Ministerial Agreement 510-2003); the Coordination Office for Indigenous Peoples of the Institute of Public Criminal Defence; the Multiculturalism Directorate of the National Civilian Police; the Indigenous Inter-institutional State Coordinator; municipal legal offices for the defence of the rights of indigenous peoples and popular law offices to provide free legal assistance to persons of limited economic means in municipalities in which there is a large number of indigenous communities; and the High-level Commission to Deal with Issues of Indigenous Rights and of Indigenous Peoples, coordinated by the Ministry of Foreign Affairs.

65. Current laws that may be invoked and applied to ensure fulfilment of the obligations of the United Nations Declaration on the Rights of Indigenous Peoples include:

- Legislative Decree 57-2002, Reform of the Criminal Code, definition of the crime of discrimination
- Legislative Decree 19-2003, National Languages Act
- Legislative Decree 81-2002, Education against Discrimination Act
- Government Agreement 526-2003, which established the Vice-Ministry for Bilingual Intercultural Education

- Government Agreement 22-2004, which expands bilingual education and multiculturalism and interculturalism in the national education system
- Ministerial Agreement 930-2003 of the Ministry of Education on the promotion of and respect for the wearing of indigenous costume by students and technical and administrative staff of official and private establishments
- Government Agreement 126-2004, which declared 21 March of every year the National Day for the Elimination of All Forms of Racial Discrimination
- Government Agreement No. 96-2005, which set up the President's Advisory Council on Indigenous Peoples
- Ministerial Agreement 294-2004, which declared the ethnic drama *Rabinal Achi'* part of the intangible cultural heritage of the nation
- Ministerial Agreement 211-2008, which created local development units in each department of the Republic of Guatemala, taking into account the presence of linguistic communities in more than one department to foster the cultural development of the indigenous population in Guatemala
- Ministerial Agreement 385-2008, which created new community art academies in various municipalities of the Republic of Guatemala, with the aim of encouraging the arts in indigenous communities
- Legislative Decree 11-2002, Urban and Rural Development Councils Act
- Legislative Decree 12-2002, Municipal Code
- Legislative Decree 14-2002, General Decentralization Act
- Legislative Decree 24-2006, which established 9 August of every year as the National Day of the Indigenous Peoples of Guatemala

J. Indigenous language and cultural studies centres[20]

66. The country has the Guatemalan Academy of Mayan Languages (ALMG) and the National Languages Act, contained in decree 19-2003 of the Congress of the Republic, which in its preamble states that "language is one of the foundations underpinning the culture of peoples, being the principle means for the acquisition, preservation and transmission of their world vision, values and customs, in the framework of the national and universal cultures that characterize the Maya, Garifuna and Xinka peoples". It also states that "the Political Constitution of the Republic recognizes the right of indigenous peoples and communities to their cultural identity in accordance with their values, their language and their customs, the safeguarding of those rights being a fundamental duty of the State".

67. Despite the achievements made, it must be recognized that efforts are limited, given the fact that the Maya, Garifuna and Xinka account for 41 per cent of the country's population.

68. The 2008-2012 Education Policies include the Bilingual Education Policy. The Government of Álvaro Colom intends to strengthen intercultural bilingual education by increasing the allocated budget and by holding discussions with the

[20] Ibid., para. 86.

representatives of the indigenous organizations of the intercultural bilingual education model in the country, respecting their world vision, texts, materials and teaching resources, and by increasing the number of bilingual teachers hired at the different levels and in the different forms of education, and improving the working conditions established by the Act to expand intercultural bilingual education.

69. In this field Guatemala also has the Rafael Landívar University's Institute of Linguistics and Education, in the Faculty of Humanities, and its EDUMAYA programme, as well as the San Carlos University of Guatemala and its Language Learning Centre (CALUSAC).

70. Where higher education is concerned, greater efforts are needed to effectively support the creation and operation of the Mayan university, which would be a specific academic body for the study of the language and culture of indigenous peoples, where not only they, but all those who wish to learn about their culture, would have the opportunity to study.

II. Information on how the Government is addressing issues related to the special theme of the ninth session of the Permanent Forum

A. Development of culture and identity[21]

71. To promote the development of the culture and identity of indigenous peoples, the Governments of Guatemala, particularly those of the last five years (2004-2009), have addressed various issues related to public policies, plans, projects and activities, including the following:

- Evaluation of rural development policies, strategies, programmes and plans related to poverty, to ensure their ethnic, cultural and gender relevance
- Promotion of production and entrepreneurial linkages with the goal of ensuring the inclusion of the indigenous population
- Promotion of ethnically and culturally relevant social investment programmes that encourage equal opportunities
- Strengthening of the participatory mechanisms provided for in the Decentralization Act and the Urban and Rural Development Councils Act and Regulations
- Promotion and execution of programmes designed to eliminate racism and discrimination
- Promotion of legislation to eliminate discrimination
- Promotion of legislation to defend the rights of indigenous peoples
- Strengthening of bilingual education
- Dissemination and promotion of the cultural traditions and customs of indigenous peoples

[21] Ibid., paras. 15, 16, 19, 37 and 97.

- Promotion of cultural relevance in State activities and services
- Training for civil servants and employees in areas related to racism and discrimination
- Assessment and inclusion of the medicinal practices of indigenous peoples in State health services
- Review of the systems of pre-investment, investment and geographic distribution, as well as the technical instruments of different institutions for recording statistics, especially the Presidential General Secretariat for Planning and the National Statistics Institute, to ensure that they reflect ethnic and cultural diversity
- Observation and follow-up of international commitments assumed by and recommendations made to Guatemala with regard to indigenous peoples and the fight against discrimination and racism

B. Indigenous peoples and the Millennium Development Goals

72. To promote and safeguard the effective and full enjoyment of the individual, collective and specific rights of indigenous peoples, the Government of Guatemala designs plans, projects and activities, with their corresponding goals, which also seek to achieve the Millennium Development Goals, especially as regards health and education.

73. In its work, the executive branch has broad legal support and policies for the inclusion of indigenous peoples. It recognizes that the country is multicultural, owing to its four cultures, and that they must be given equal representation, weight and status in the State, guaranteeing the practice of democratic values based on freedom, equality, participation and solidarity, and ensuring that the State is pluralistic.

74. The following public policies for the inclusion of indigenous peoples have been planned and are being implemented: national policies on culture and sport; multicultural and intercultural guidelines for the National Education System, including the Public Agenda concerning the Indigenous Peoples as part of the Peace Agreements, 2005-2012; the Policy for the Advancement and Development of Guatemalan Women; the public policy in favour of co-existence and the elimination of racism and racial discrimination in Guatemala.

75. In a similar vein, intercultural programmes and action plans include the National Plan for Long-term Cultural Development, the Equal Opportunities Plan 2001-2006, the Plan of Action for the Full Participation of Guatemalan Women 2002-2012, the Programme for the Realization of the Millennium Development Goals, and the Peace Agreements.

76. As regards education and health, action is being taken to facilitate access to services by widening coverage. At the same time, efforts are being made to ensure that materials and services are of appropriate quality and meet the specific needs and demands of the indigenous peoples.

77. The Government of Guatemala is faced with great challenges. One difficulty is the lack of a budget sufficient to address the gaps to the extent necessary.

Admittedly, a focus on gender and indigenous peoples has not been sufficiently or appropriately integrated into the process of preparing annual operative plans and formulating the budgets of different Government agencies. It should be recalled, however, that the Peace Agreements provide explicitly for the drawing up of plans specifically addressing those two segments of the population.

78. Mr. Miguel Angel Ibarra, Vice-Minister for Foreign Affairs, speaking before the High-level Segment of the seventh session of the Human Rights Council on 4 March 2008, said that the Government was committed to developing a social policy "predicated on human rights, gender equity and respectful and fair interculturality. This will entail a refocusing of the national budget on the development of public policies to bring about a gradual decrease in discrimination, inequity and extreme poverty and make up for major shortcomings in addressing child malnutrition, rural development, unemployment and lack of access to health and education services". The Vice-Minister stressed that "through concerted efforts, we shall advance towards achieving the Millennium Goals".[22]

III. Difficulties in implementing the Permanent Forum's recommendations

79. The main difficulties have been:

- Ignorance by public officials of the domestic and international obligations of the State of Guatemala with regard to indigenous peoples' rights under conventions, declarations and other international instruments
- Prevalence of stereotypes and prejudice against the Maya, Garifuna and Xinka indigenous peoples

80. An overview of the obstacles is provided by the study entitled "Diagnóstico de la institucionalización de la identidad y los derechos de los pueblos indígenas 2004-2007" carried out by the Office of the Vice-President of the Republic of Guatemala and the Presidential General Secretariat for Planning, which contains the following recommendations:

- The category "people" established in the Peace Agreements together with the collective rights enshrined in international laws, particularly International Labour Organization (ILO) Convention No. 169, should be embraced not only conceptually but also in methodological terms;
- So far as political reform is concerned, it needs to be stipulated in the Constitution that Guatemala is a multi-ethnic, multicultural and multilingual country and that the Guatemalan nation is composed of various peoples;

[22] The United Nations reports on progress towards the Millennium Development Goals in Guatemala. "Millennium Goals: Progress report from Guatemala", published in October 2002, described the supporting conditions for the achievement of the Millennium Development Targets as "poor" and "poor but improving". As for attainment of the Goals, comments ranged from "unlikely" to "within reach". The State of Guatemala will, for its part, continue its efforts to achieve the Millennium Development Goals.

- Legal reform requires the political and administrative decentralization and restructuring of the State in the light of the fact that the nation is composed of various peoples, on the basis of socio-cultural and linguistic criteria;
- Financial reform calls for the implementation of outstanding commitments in the ongoing tax reform, first and foremost those aspects to do with equity in tax collection and public budget apportionment and the resulting increase in general and specific public investment in areas having an impact on indigenous peoples.

IV. Factors that have facilitated the implementation of the Permanent Forum's recommendations

81. The State of Guatemala is making efforts to translate into concrete, effective action its political will to advance the implementation of the Forum's recommendations, but it has to be acknowledged that the measures taken by the executive and legislative branches do not match expectations.

82. At Government level, there is a shortage of economic resources; there is also a need for a further strengthening of the structures and activities of public bodies responsible for indigenous issues.

83. In Congress, little progress has been made in placing indigenous issues on the legislative agenda; in addition, it often takes a long time for laws to be enacted in favour of indigenous Guatemalans. Specific commissions exist which not only rule on bills but also make their own proposals. Consequently, the enactment of laws does not keep pace with needs, and some legislative initiatives remain practically at a standstill.

V. National coordinating bodies for indigenous issues

84. Under the last two Governments, steps were taken to strengthen the office of the Indigenous Inter-institutional State Coordinator, a coordinating forum which serves as an umbrella body for indigenous mechanisms whose function has been to help to manage and steer the institutional mainstreaming of indigenous rights in the State, however, this body does not have a sufficient legal basis.

85. A number of financially autonomous institutions concerned with indigenous issues have been established by legislative decree, namely, the Guatemalan Academy of Mayan Languages, the Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala, the Office for the Defence of Indigenous Women's Rights and the Guatemalan Indigenous Development Fund. However, they do not necessarily have a coordinating role, as understood in this questionnaire.

VI. Civil service capacity-building programmes on issues concerning indigenous peoples

86. The information, training and awareness-raising activities carried out in various State institutions and offices cannot yet be strictly described as a systematic civil service capacity-building programme on issues concerning indigenous peoples.

87. Examples exist of good practices in the administration of justice. The judiciary and the Institute of Public Criminal Defence have joined efforts to strengthen the translation services of courts and prosecutors' offices in the languages of each region.

88. As at 2009, there was a Maya language translator or interpreter in 62, or 17.22 per cent, of the 360 judicial bodies existing nationwide. Moreover, in some cases interpreters can provide their services in courts other than those to which they have been appointed, if the need arises and a judge so requests.

89. The Institute of Public Criminal Defence provides defence services in indigenous languages for persons of indigenous origin by ensuring the use of their own language in the official judicial system and takes the cultural dimension into account in cases of culture-specific conflicts within communities. It also caters to the needs of the indigenous authorities in their own language, strengthening their role in internal conflict resolution; cultural facilitators discuss these matters with them in their own language.

90. In public defence proceedings, the multi-ethnic, multicultural and multilingual character of the Guatemalan people is recognized by law. Accordingly, indigenous defence offices have been established which serve the population in their own language in:, Santa Cruz del Quiché, Quiché; Nebaj, Quiché; Ixcán, Quiché; Totonicapán, Totonicapán; Quetzaltenango, Quetzaltenango; Santa Eulalia, Huehuetenango; La Democracia, Huehuetenango; San Marcos, San Marcos (through an interpreter); Sololá, Sololá; Santiago Atitlán, Solola (through an interpreter); Mazatenango, Suchitepéquez; Chiquimula, Chiquimula; Puerto Barrios, Izabal; Cobán, Alta Verapaz; Salamá, Baja Verapaz; Santa Elena, Peten.

VII. Information on the promotion and implementation of the United Nations Declaration on the Rights of Indigenous Peoples

91. The Ministry of Foreign Affairs has set up five working groups composed of representatives of the three branches of State with the aim of taking cognizance of and implementing international instruments concerning the rights of indigenous peoples, including the United Nations Declaration on the Rights of Indigenous Peoples. The Presidential Commission on Discrimination and Racism against Indigenous Peoples in Guatemala, for its part, has put out leaflets on the Declaration to make it better known.

United Nations E/C.19/2010/12/Add.9

Economic and Social Council

Distr.: General
5 March 2010
English
Original: Spanish

Permanent Forum on Indigenous Issues
Ninth session
New York, 19-30 April 2010
Items 3 and 4 (a) of the provisional agenda*

Discussion on the special theme for the year "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples"

Human rights: Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Information received from Governments

Spain

Summary

This report contains the replies of the Government of Spain to the questionnaire sent to Member States concerning the recommendations of the Permanent Forum on Indigenous Issues at its eighth session. It describes, in particular, the measures taken by the Government of Spain with regard to the specific recommendations made by the Permanent Forum at its eighth session.

* E/C.19/2010/1.

10-26025 (E) 180310 310310

Please recycle

I. Implementation of the recommendations of the Permanent Forum on Indigenous Issues concerning economic and social development, indigenous women and the Second International Decade of the World's Indigenous People

A. Economic and social development

Paragraph 9

1. With regard to measures undertaken to explore and develop alternative sources of income, reduce the exploitation of natural resources, enhance conservation of biological diversity and establish measures in favour of indigenous peoples in voluntary isolation, with particular attention to the Yasuni-ITT initiative, Spain has pledged $4,000,000 through the UNDP-Spain Millennium Development Goals Achievement Fund for the Conservation and Sustainable Management of the Cultural and Natural Heritage of the Yasuni Biosphere Reserve. Of this amount, the sum of $200,000 is intended for the Yasuni-ITT initiative.

2. Furthermore, in line with the approach adopted in 2007, the Spanish Government, under the Indigenous Programme of the Spanish Agency for International Development Cooperation (AECID), has contributed 200,000 euros in support of the project of the Institute for the Advancement of Social Studies entitled "Impact-oriented strategies for the protection of peoples in isolation and initial contact within the framework of the United Nations", with the aim of developing measures and strategies of protection for peoples in isolation and initial contact as a follow-up to the recommendations of the United Nations General Assembly and Permanent Forum and on the basis of concrete commitments by States for the implementation of protection guidelines and protocols for action.

Paragraph 15

3. The Permanent Forum requests States to ensure that transnational corporations and other business enterprises comply with specific standards contained in the United Nations Declaration on the Rights of Indigenous Peoples and International Labour Organization (ILO) Convention No. 169. The Spanish Government agrees that this is an issue that calls for special attention and, accordingly, under the Indigenous Programme, is seeking to promote a process of dialogue and awareness-raising and thereby to ensure that the rights of indigenous peoples are respected by Spanish business enterprises whose activities have an impact on their territories.

4. In October 2009, in order to associate the AECID technical cooperation services with these efforts, a workshop was held at the Spanish Cooperation Training Centre in Montevideo, Uruguay, on cooperation with indigenous peoples: implementation of ILO Convention No. 169, to provide AECID technical and managerial personnel with the necessary guidelines and methology for effective implementation of the provisions of the Convention.

Paragraph 16

5. With regard to the recommendation by the Permanent Forum that States should ensure that business enterprises comply with relevant laws and standards, Spain is conscious of the difficulties involved in establishing forums for dialogue and

awareness-raising with the private sector. Nevertheless, the Master Plan for Spanish Cooperation 2009-2012 seeks to associate enterprises with international development cooperation by promoting public-private partnerships for development as one of the ways of involving them in cooperation through greater collaboration between them and the public sector. Compliance with national and international standards is promoted through such mechanisms.

Paragraph 19

6. The Spanish Government recognizes the full presence and effective participation of indigenous peoples, as it is urged to do by the Permanent Forum. Accordingly, applying the principles laid down in the Spanish Strategy for Cooperation with Indigenous Peoples (ECEPI), it takes particular account of the principle of free, prior and informed consent in the development of activities or programmes that may directly or indirectly affect the indigenous people. Development cooperation project officers are therefore expected to be in constant contact with the main indigenous organizations in each country, creating opportunities for indigenous leaders and representatives to express their views on projects to be developed in their territories or in which they are the beneficiary population.

7. The aim is to put in place tools and mechanisms whereby indigenous peoples can exercise these rights of participation, consultation and consent.

8. Furthermore, as an example of dialogue and participation by indigenous peoples in development activities financed by the Spanish Government, mention should be made of the support in the amount of 250,000 euros provided for the project entitled "Strengthening of indigenous communication in Latin America 2009-2011", proposed and developed by the Latin American Council on Indigenous Peoples' Film and Video (CLACPI). The general aim of the project is to strengthen indigenous communication in Latin America through various initiatives proposed by CLACPI relating to dissemination, training, gender issues, exchange, discussion and coordination, with a view to enhancing and highlighting the modes of social organization of indigenous peoples in the region.

Paragraph 30

9. With regard to the recommendation that States, with the effective participation of indigenous peoples, address the concomitant loss of community citizenship and human rights when indigenous peoples are forced to migrate or are displaced, it should be recalled that Spain is a State with no indigenous people living in its national territory. Nevertheless, through the publication reported to the Permanent Forum, in 2009, entitled *La ratificación del Convenio No. 169, Relexiones en torno a sus implicaciones*, the AECID Indigenous Programme has identified situations in which a country like Spain has a direct relationship with indigenous peoples. Notable among these is that resulting from the immigration to our country in recent decades of indigenous persons, who need to be given the possibility of promoting and protecting their culture.

10. Our Government is, however, aware of the need to give special attention to indigenous men and women who have migrated to cities since, in so doing, they usually leave behind the traditional livelihoods that ensured their survival. As it is difficult to adapt traditional subsistence practices to an urban environment, specific

policies must be put in place to enable indigenous men and women to cope with the new situation, avoid being marginalized and find new livelihoods, without having for that reason to renounce their indigenous identity. In situations where urban indigenous people are already integrated into the urban economy, the Spanish Government will seek through its action to promote their participation in accordance with their own development models.

B. Indigenous women

Paragraph 31

11. The Permanent Forum recommends that States and the United Nations system ensure the inclusion of the priorities and demands of indigenous women. In that regard, it should be noted that the gender in development strategy adopted in the context of Spanish cooperation advocates mainstreaming gender as a cross-cutting priority. This requires taking into account the possible impact on gender of any actions planned at all levels and in all areas of cooperation. Thus, the concerns and experiences of both women and men are taken into account in developing, implementing, following up on and assessing political, economic and social policies and programmes, so as to ensure that they equally benefit.

12. As explained at other sessions, the Spanish Strategy for Cooperation with Indigenous Peoples provides for various strategic approaches and priority activities that specifically support indigenous women's organizations in communities and the full empowerment of indigenous women. The Strategy also provides for the implementation of policies in support of indigenous women in terms of organization; sex education, sexual and reproductive health, measures to combat sexual violence, finance and any other areas relevant to overcoming inequality in rights. Therefore, all development-related activities financed by the Spanish Government targeting indigenous peoples must include a gender perspective that will allow indigenous women to participate fully.

Paragraph 33

13. This Government takes into account the recommendation of the Permanent Forum and will endeavour to conduct assessments of the extent to which it has advanced the previous recommendations of the Forum on indigenous women through the development projects it has financed.

C. Second International Decade of the World's Indigenous People

Paragraph 36

14. With respect to the recommendation that States should support the Trust Fund on Indigenous Issues, Spain is taking the necessary steps in order to make a contribution under the AECID Indigenous Fund.

15. Regarding the Permanent Forum's recommendation that States apply the rights affirmed in the United Nations Declaration on the Rights of Indigenous Peoples, it should be noted that Spain has endorsed the universal framework of minimum standards for the survival, dignity and well-being of indigenous peoples, as set forth in the Declaration. That framework has been incorporated into the Spanish Strategy

for Cooperation with Indigenous Peoples and the Master Plan for Spanish Cooperation 2009-2012, both of which have adopted the following as guiding principles for Spanish cooperation activities affecting indigenous peoples:

- The right to free, prior and informed consent;
- Adoption of a basic focus on processes and on the recognition of rights;
- Self-identification as the primary criterion for the identification of indigenous peoples;
- Recognition of links between the identity, culture and world view of indigenous peoples and effective control of their lands and territories;
- The right of indigenous peoples to self-development.

II. Follow-up to the recommendations of the Permanent Forum on the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, and on dialogue with the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and other special rapporteurs

Paragraphs 81 and 82

16. The Permanent Forum recommends that States include adequate information on the implementation of the Declaration in their core reports to the human rights treaty bodies. It also recommends that the relevant treaty bodies take into account the Declaration and urges States to include information regarding its implementation in their reports to the universal periodic review of the Human Rights Council. While Spain is particularly active in terms of development cooperation with and promoting the international visibility of indigenous peoples, there is no indigenous Spanish population as such. Therefore, the principles set forth in the Declaration cannot be implemented within the national territory, nor can they be included in reports to treaty bodies or to the universal periodic review.

17. However, it is true that as a result of migration, members of various indigenous peoples have settled in Spain. Efforts will be made to include information on their situation in forthcoming reports to be submitted by Spain.

Paragraph 83

18. Pursuant to the recommendation by the Permanent Forum that States should establish, where it does not already exist, a national dialogue with indigenous peoples on human rights, based on the Declaration, the Spanish Government provided support in the amount of 100,000 euros for the El Salvador Office of the Human Rights Ombudsman project, entitled "Strengthening of the Permanent Committee on the Rights of Indigenous Peoples of the Office of the Human Rights Ombudsman". The aim of this project is to strengthen organizations for promotion and protection of indigenous peoples' rights in El Salvador and to promote their participation in political activities and their involvement in pursuing efforts to ensure recognition of their rights.

19. Similarly, Spain made a contribution of 120,000 euros in support of the Fray Bartolomé de las Casas Centre for Human Rights proposal entitled "Capacity-building for the defence and promotion of the human rights of indigenous peoples in Chiapas (Mexico)". The Centre won the eighteenth Bartolomé de las Casas Prize, awarded by the Spanish Secretariat of State for International Cooperation and Casa de América.

Paragraph 86

20. In view of the Permanent Forum's recommendation that States support the creation of indigenous language and cultural studies centres in universities, Spain has, under AECID Indigenous Programme of the Spanish Agency for International Development Cooperation consolidated its support for the Educational Programme on the Human Rights of Latin American Indigenous Peoples, sponsored by the University of Deusto in conjunction with the Office of the United Nations High Commissioner for Human Rights. The programme, which is offered in Bilbao, Spain and Geneva, Switzerland, affords indigenous men and women the opportunity to learn about international human rights in general and indigenous rights in particular, in order to assist their organizations and communities in the protection and promotion of their peoples' human rights.

21. Also worth noting is Spain's contribution of 145,000 euros in support of the training programme offered by the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean. That support is provided through the implementation of an advanced course on indigenous peoples, human rights, governance and international cooperation, for indigenous professionals and leaders to be offered by Carlos III University of Madrid. The course provides a comprehensive, quality education that will prepare graduates to participate in negotiations for indigenous rights at the local, national and international levels and to manage development projects in their communities. This interdisciplinary training programme provides both theoretical and practical instruction based on a multicultural approach covering the whole of Ibero-America.

Paragraph 88

22. Regarding the recommendation that all States apply the principles of general comment No. 11 (2009) of the Committee on the Rights of the Child, on indigenous children and their rights under the Convention on the Rights of the Child, it should be noted that Spain has financed and actively participated in organizing — together with, inter alia, the ILO International Programme on the Elimination of Child Labour (IPEC) and the United Nations Children's Fund (UNICEF) Regional Programme on the Rights of Indigenous Children and Youth in Latin America — a Latin American meeting of indigenous peoples and governments to discuss an approach to effective protection of the rights of indigenous boys, girls and adolescents involved in child labour, with a view to its abolishment, which was held at the AECID Training Centre in Cartagena, Colombia, from 8 to 10 March 2010.

Paragraph 94

23. With regard to the Permanent Forum's mission to Bolivia and Paraguay to study the situation of forced labour of Guarani communities, Spain wishes to congratulate the members of the Permanent Forum for their work and to recall its

support to that mission by helping to defray part of the travel costs of Bartolomé Clavero, one of the Forum's independent experts.

III. Cultural development and identity

24. The Spanish Strategy for Cooperation with Indigenous Peoples recognizes that their survival is attributable to the fact that their members have a shared sense of identity, reflected in the will to remain a part of their respective communities and to preserve their traditional lifestyles and ultimately their own cultures. Cultures, being a set of processes and mechanisms common to the human species are dynamic, take in new ways of doing things — whether native or foreign — and cast off others, in a constant process of adaptation to the environment. When these processes occur in conditions of freedom and respect, they result in a strengthened and revitalized culture.

25. In this connection, our Government draws attention, first, to its funding of the Third Latin American Meeting of Local Governments in Indigenous Territories: Tekohäre, held in Asunción, Paraguay, from 23 to 26 November 2009. That meeting provided an opportunity for institutions to exchange information on local and national management experience which were instrumental in promoting the development with identity of the indigenous Latin American peoples in their own territories.

26. Attention is also drawn to the Ninth General Assembly of the Fund for the Development of the Indigenous Peoples of Latin America and the Caribbean, which will be held in Madrid on 9 and 10 September 2010. It is an honour for our country to host this event because it will familiarize Spanish society with the main problems currently facing indigenous peoples and will provide a forum for dialogue with the European donor agencies and others engaged in cooperation activities.

IV. Difficulties in the implementation of the recommendations of the Permanent Forum

27. It can sometimes be difficult to implement the recommendations of the Permanent Forum when it comes to executing development projects in conjunction with indigenous organizations in countries whose official policies have a different focus in terms of giving priority to geographical areas or specific areas of activity. Consequently, one of the salient features of the Spanish Government's policy on cooperation with indigenous peoples is to ensure a dual give-and-take with our partner countries: first, with the government institutions responsible for implementing public policy in areas relating to indigenous peoples; secondly, and on an equal footing, with the associations and organizations that are most representative of the indigenous movement.

V. Factors facilitating the implementation of the recommendations of the Permanent Forum

28. In the case of Spain, the fact of having an ad hoc frame of reference such as the Spanish Strategy for Cooperation with Indigenous Peoples allows its action on

behalf of indigenous peoples to be consistent both with the international normative framework constituted by the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, and with the general principles underlying Spain's international cooperation activities.

VI. Specific policies and strategies to address the needs of indigenous peoples

29. In 2007, the Spanish Government adopted and announced the new Spanish Strategy for Cooperation with Indigenous Peoples, which reflects Spain's commitment to promoting high-quality cooperation that meets the needs and requirements of indigenous peoples.

30. In addition, the Third Master Plan for Spanish Cooperation 2009-2012 makes cooperation with indigenous peoples a multisectoral priority.

VII. Specialized technical unit for indigenous issues

31. The Government has a specialized technical unit whose work is to plan, coordinate, execute and ensure follow-up to all Spanish cooperation activities targeted in whole or in part at indigenous peoples. This unit — the Indigenous Programme — forms part of AECID, itself part of the Ministry of Foreign Affairs and Cooperation. Its address is as follows:

Programa Indígena
Agencia Española de Cooperación Internacional para el Desarrollo (AECID)
Avenida de Reyes Católicos, No. 4
28040 Madrid
http://www.aecid.es/indigena.

VIII. Training on indigenous issues for public officials

32. The Agency's Indigenous Programme organizes participatory annual training seminars designed to train technical staff working in the Spanish cooperation programme. For example, in 2009 the Indigenous Programme conducted a workshop with experts and senior officials from our technical cooperation offices on the theme: "Development cooperation with indigenous peoples: the implementation of ILO Convention No. 169". The workshop facilitated joint consideration of issues and an exchange of experience and best practices to promote the mainstreaming of indigenous issues as a cross-cutting element in all the programmes and activities of the Spanish cooperation programme, which patterns its fundamental principles and activities on the provisions of ILO Convention No. 169.

IX. Implementation of the United Nations Declaration on the Rights of Indigenous Peoples

33. Through its action in various areas, in particular development cooperation, the Government of Spain seeks to observe the provisions of the United Nations Declaration on the Rights of Indigenous Peoples. Accordingly, in 2009 it allocated 160,000 euros to support a project of the Almáciga Intercultural Working Group entitled "Promoting full and effective participation by representatives of indigenous peoples in United Nations activities relating to human rights and the environment (article 18 of the United Nations Declaration on the Rights of Indigenous Peoples)".

34. Lastly, another specific activity supported by the Spanish Government in application of the Declaration is the Programme for the implementation of the rights of indigenous peoples, which received 132,000 euros in funding, and encompasses various activities all of which are intended to promote the implementation of the rights of indigenous peoples set out in the United Nations Declaration.

United Nations E/C.19/2010/12/Add.10

Economic and Social Council

Distr.: General
12 March 2010

Original: English

Permanent Forum on Indigenous Issues
Ninth session
New York, 19-30 April 2010
Items 3 and 4 (a) of the provisional agenda*

Discussion on the special theme for the year: "Indigenous peoples: development with culture and identity: articles 3 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples"

Human rights: implementation of the United Nations Declaration on the Rights of Indigenous Peoples

Information received from Governments

Republic of Namibia

Summary

The present document contains the response of the Government of the Republic of Namibia to the questionnaire sent to Member States concerning the recommendations of the Permanent Forum on Indigenous Issues at its eighth session.

* E/C.19/2010/1

10-27230 (E) 220310

Please recycle

Introduction

1. As mentioned in our previous submission in 2009, the Government of the Republic of Namibia will continue its efforts to assist our most marginalized communities where possible to ensure that all of us as Namibians are integrated into the mainstream of our economy to achieve our "Vision 2030" and the Millennium Development Goals.

2. In addition, our submission is more or less the same as that of last year, as nothing much has changed during the most recent time period.

3. However, it is worth mentioning that the Cabinet of the Republic of Namibia, in accordance with decision No. 25/29.11.05/001, recently decided to create a Directorate for the "San Development Programme" within the Office of the Prime Minister.

Responses to questionnaire to Governments from the Permanent Forum on Indigenous Issues in preparation for its ninth session

4. Response to recommendations addressed to Governments by the Permanent Forum on Indigenous Issues in its report (E/2009/43, paras. 19, 31 and 39):

> [19.] In all decision-making processes, the Government of the Republic of Namibia always applies a community participatory approach.
>
> [31.] Following the achievement of its independence in 1990, the Government of the Republic of Namibia established the Ministry of Gender Equality and Child Welfare.
>
> [39.] The Republic of Namibia is a signatory to the United Nations Declaration on the Rights of Indigenous Peoples.

5. The Constitution of the Republic of Namibia protects the rights of all citizens, including those in marginalized communities, concerning culture and identity.

6. The objective of the San Development Programme, which was approved by the Cabinet on 29 November 2005 and spearheaded by the Hon. Deputy Prime Minister, is to ensure that our San people are fully integrated in the mainstream of our society and economy and thereby to ensure that all of us, as Namibians, can achieve our "Vision 2030". In terms of the Third National Development Plan, the welfare of the San communities is categorized as a priority programme under the key result area related to quality of life and in line with the Millennium Development Goal of eradicating extreme poverty.

7. Obstacles faced by the Government of Namibia in the implementation of the recommendations of the Permanent Forum are a lack of financial resources, human resources and public awareness.

8. As mentioned above, the Cabinet of the Republic of Namibia, in accordance with decision No. 25/29.11.05/001, recently decided to create a Directorate for the San Development Programme within the Office of the Prime Minister to accelerate the integration of marginalized communities into the mainstream of the economy.